TITLE 41—PUBLIC CONTRACTS

This title was enacted by Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3677

Subtitle		Sec.
I.	**FEDERAL PROCUREMENT POLICY**	**101**
II.	**OTHER ADVERTISING AND CONTRACT PROVISIONS**	**6101**
III.	**CONTRACT DISPUTES**	**7101**
IV.	**MISCELLANEOUS**	**8101**

Disposition Table

(Showing Disposition of Former Sections of Title 41)

Title 41 Former Sections	*Title 41 New Sections*
1 to 4a	(Previously repealed)
5, 5a	6101
6	(Previously repealed)
6a(a)	6102
6a(b) to (e)	(Previously repealed)
6a(f)	6102
6a(g)	(Previously repealed)
6a(h)	6102
6a(i)	(Previously repealed)
6a(j)	6102
6a(k) to (n)	(Previously repealed)
6a(*o*)	(Omitted)
6a(p)	(Previously repealed)
6a–1	6102
6a–2	T. 2 § 1816b
6a–3, 6a–4	6102
6b(a), (b)	Rep.
6b(c)	T. 25 § 903g
6b(d)	6102
6b(e)	Rep.
6c to 6jj	(Previously repealed)
6kk	Rep.
6*ll*	(Previously repealed)
6mm	(Previously transferred to T. 41 § 6b(d) prior to repeal)
7 to 7d	(Previously repealed)
8	6103
9	(Previously repealed)
10	Rep.
10a	8302
10b	8303
10b–1	(Previously omitted)
10b–2	8304
10b–3	8305
10c	8301
10d	8303
11, 11a, 12, 13	6301 to 6304
13a	(Previously repealed)
14	6301
15	6305
16	(Previously repealed)
16a to 16d	Rep.
17 to 21	(Previously repealed)
22 to 24	6306 to 6308
24a	Rep.
25 to 27	(Previously repealed)
28 to 34	Rep.
35 (matter before subsec. (a) less words related to definition of ''agency of the United States'').	6502
35 (matter before subsec. (a) related to definition of ''agency of the United States'').	6501
35(a) to (d)	6502
36	6503
37	6504

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 41)

Title 41 Former Sections	*Title 41 New Sections*
38 to 40	6506 to 6508
41	6501
42	6511
43	6505
43a(a)	6509
43a(b) (1st sentence)	6507
43a(b) (last sentence), (c)	6509
43b	6510
44	Rep.
45	6502
46 to 48	8502 to 8504
48a	8505
48b	8501
48c	8506
49, 50	6309
51	Rep.
52	8701
53	8702
54	8707
55	8706
56	8705
57	8703
58	8704
101, 102(a)	Rep.
102(b)	(Previously repealed)
103	Rep.
104(a)	(Previously repealed)
104(b) to 115	Rep.
116	(Previously repealed)
117, 118(a)	Rep.
118(b)	(Previously repealed)
118(c) to 125	Rep.
151 to 162	(Previously repealed)
201 to 205	(Previously transferred to T. 40 §§ 471 to 475 prior to repeal)
211 to 213	(Previously transferred to T. 40 §§ 751 to 753 prior to repeal)
214	(Previously transferred to T. 44 § 391 prior to repeal)
215	(Previously transferred to T. 5 § 630c prior to repeal)
216	(Previously transferred to T. 5 § 630d and T. 40 § 754 prior to repeal)
217	(Previously transferred to T. 5 § 630e and T. 40 § 755 prior to repeal)
218	(Previously transferred to T. 5 § 630f prior to repeal)
219	(Previously transferred to T. 5 § 630g and T. 40 § 756 prior to repeal)
231 to 237	(Previously transferred to T. 40 §§ 481 to 488 prior to repeal)
238	(Previously transferred to T. 5 § 630h and T. 40 § 758 prior to repeal)
239 to 240	(Previously transferred to T. 40 §§ 489 to 492 prior to repeal)
251	Rep.
251 note (Pub. L. 110–252, §§ 6102, 6103).	3509
251 note (Pub. L. 110–417, § 867)	4711
252(a)	3101
252(b)	3104
252(c)(1)	3106
252(c)(2)	3301
252a, 252b	3101

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 41)

Title 41 Former Sections	*Title 41 New Sections*
252c	4709
253(a)	3301
253(b)	3303
253(c) to (f)	3304
253(g)	3305
253(h)	3301
253(i)	3105
253(j)	3304
253a	3306
253a note (Pub. L. 108–136, § 1428).	3306
253b(a), (b)	3701
253b(c) to (f)	3702 to 3705
253b(g) (related to 41:253b(e))	3704
253b(g) (related to 41:253b(f))	3705
253b(h)	3706
253b(i)	3707
253b(j)	3308
253b(k), (*l*)	3708
253b(m)	4702
253c	3311
253d	4703
253e	(Previously repealed)
253f	3310
253g	4704
253h	4103
253h note (Pub. L. 103–355, § 1054(b)).	4102
253h note (Pub. L. 106–65, § 804)	4104
253h note (Pub. L. 110–417, § 863(a)–(e)).	3302
253i	4105
253j	4106
253k	4101
253*l*	3902
253*l*–1 to 253*l*–8	3904
253m	3309
254(a)	3901
254(b)	3905
254 note (Pub. L. 110–417, § 864(a), (b), (d), (e), (f)(2), (g)).	3906
254a	4708
254b(a) to (g)	3502 to 3508
254b(h)	3501
254b note (Pub. L. 110–417, § 866).	4710
254b note (Pub. L. 110–417, § 868).	3501
254c	3903
254d	4706
255(a)	4501
255(b), (c)	4502
255(d) to (g)	4503 to 4506
256(a) to (d)	4303
256(e) to (k)	4304 to 4310
256(*l*)(1)	4301
256(*l*)(2)	4302
256(m)	4301
256a	4707
257	4701
258	(Previously repealed)
259(a)	151
259(b)	152
259(c)(1)	111
259(c)(2)	112
259(c)(3)	114
259(c)(4)	107
259(c)(5)	113
259(c)(6)	116
259(c)(7)	109
259(c)(8), (9)	108
259(c)(10)	115
259(c)(11)	103
259(c)(12)	110
259(c)(13)	102
259(c)(14)	105
259(d)	153
259(e)	106
260	3101
261	3102
262	4701
263	3103
264	3307
264 note (Pub. L. 103–355, § 8002)	3307

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 41)

Title 41 Former Sections	*Title 41 New Sections*
264a (''commercial item'')	103
264a (''nondevelopmental item'').	110
264a (''component'')	105
264a (''commercial component'').	102
264b	3307
265	4705
266	3105
266a	3901 note prec.
271 to 274	(Previously transferred to T. 40 §§ 511 to 514 prior to repeal)
281 to 291	(Previously transferred to T. 44 §§ 392 to 402 prior to repeal)
321 to 322	Rep.
351(a) (words before par. (1) related to applicability).	6702
351(a) (words before par. (1) related to required contract terms), (1) to (5).	6703
351(b)	6704
352	6705
353	6707
354(a)	6706
354(b)	6705
355	6707
356	6702
357	6701
358	6707
401, 402	(Previously repealed)
403(1)	133
403(2)	111
403(3)	112
403(4)	114
403(5)	132
403(6)	107
403(7)	113
403(8)	116
403(9)	109
403(10) (''item'', ''item of supply'').	108
403(10) (''supplies'')	115
403(11)	134
403(12)	103
403(13)	110
403(14)	105
403(15)	102
403(16)	131
403(17)	1301
404(a)	1101
404(b)	1102
405(a) to (c)	1121
405(d), (e)	1122
405(f)	1121
405(g)	1122
405(h)(1)	1130
405(h)(2)	2305
405(i)	1125
405(j)	1126
405(k)	1131
405 note (Pub. L. 108–136, § 1431(b)).	1129
405 note (Pub. L. 110–417, § 874(a)).	2311
405a (1st sentence)	1121
405a (last sentence)	1123
405b	2304
405c(a)	2303
405c(b)	2303 note
405c(c)	2303
406	1701
407	(Previously repealed)
408	1121
409	(Previously repealed)
410	1101
411	1122
412(a)	2307
412(b)	2306
413	1124
414	1702
414a	1706
414b(a) to (c)	1311
414b(d), (e)	1312
415	(Previously repealed)
416	1708

Disposition Table—Continued

(Showing Disposition of Former Sections of Title 41)

Title 41 Former Sections	*Title 41 New Sections*
417	1712
417a	1713
417b	2313
418	1705
418a	2302
418b	1707
419	1709
420	(Previously repealed)
421(a), (b)	1302
421(c) to (f)	1303
422(a) to (e)	1501
422(f) to (h)(1)	1502
422(h)(2) to (4)	1503
422(i)	Rep.
422(j) to (*l*)	1504 to 1506
423(a), (b)	2102
423(c) to (e)	2103 to 2105
423(f)	2101
423(g)	2106
423(h)	2107
424	(Previously repealed)
425	1304
426	2301
426a	(Previously repealed)
427	1901
428	1902
428a	1903
428a note (Pub. L. 108–136, §1441).	1904
429	1905
430	1906
431(a), (b)	1907
431(c)	104
431a	1908
431a note (Pub. L. 108–375, §807(c)).	1908
432	1711
433	1703
433 notes (Pub. L. 108–136, §§1412(a), 1413).	1703
433 note (Pub. L. 108–136, §1414).	1128
433a	1704
433a note (Pub. L. 110–417, §869).	1704
434	2308
435	1127
436	2309
437	2310
438	7105
439	1710
440	2312
501 to 509	(Previously repealed)
601	7101
602, 603	7102
604, 605	7103
606	7104
607(a) to (e)	7105
607(f)	7106
607(g)	7107
608	7106
609(a)	7104
609(b) to (f)	7107
610	7105
611, 611 note (Pub. L. 102–572, §907(a)(3)).	7109
612	7108
613	Rep.
701 to 705	8102 to 8106
706, 707	8101

ENACTMENT OF TITLE 41, UNITED STATES CODE

Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3677, provided that: ''Certain general and permanent laws of the United States, related to public contracts, are revised, codified, and enacted as title 41, United States Code, 'Public Contracts', as follows:''

PURPOSE; CONFORMITY WITH ORIGINAL INTENT

Pub. L. 111–350, §2, Jan. 4, 2011, 124 Stat. 3677, provided that:

''(a) PURPOSE.—The purpose of this Act [see Tables for classification] is to enact certain laws relating to public contracts as title 41, United States Code, 'Public Contracts'.

''(b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).''

TRANSITIONAL AND SAVINGS PROVISIONS

Pub. L. 111–350, §6(a)–(e), Jan. 4, 2011, 124 Stat. 3854, provided that:

''(a) CUTOFF DATE.—This Act [see Tables for classification] replaces certain provisions of law enacted on or before December 31, 2008. If a law enacted after that date amends or repeals a provision replaced by this Act, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this Act. If a law enacted after that date is otherwise inconsistent with this Act, it supersedes this Act to the extent of the inconsistency.

''(b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, the date of enactment of a provision enacted by this Act is deemed to be the date of enactment of the provision it replaced.

''(c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision of law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

''(d) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision of law replaced by this Act continues in effect under the corresponding provision enacted by this Act.

''(e) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision of law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.''

REPEALS

Pub. L. 111–350, §7(b), Jan. 4, 2011, 124 Stat. 3855, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Jan. 4, 2011.

Pub. L. 111–350, §7(a), Jan. 4, 2011, 124 Stat. 3855, provided that: ''The repeal of a law by this Act [see Tables for classification] may not be construed as a legislative inference that the provision was or was not in effect before its repeal.''

Subtitle I—Federal Procurement Policy

DIVISION A—GENERAL

Chapter		Sec.
1.	**Definitions**	**101**

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

11.	**Establishment of Office and Authority and Functions of Administrator**	**1101**
12.	**Federal Acquisition Institute**	**1201.**[1]
13.	**Acquisition Councils**	**1301**
15.	**Cost Accounting Standards**	**1501**
17.	**Agency Responsibilities and Procedures**	**1701**

[1] So in original. The period probably should not appear.

19. Simplified Acquisition Procedures 1901
21. Restrictions on Obtaining and Disclosing Certain Information 2101
23. Miscellaneous 2301

DIVISION C—PROCUREMENT

31. General 3101
33. Planning and Solicitation 3301
35. Truthful Cost or Pricing Data 3501
37. Awarding of Contracts 3701
39. Specific Types of Contracts 3901
41. Task and Delivery Order Contracts 4101
43. Allowable Costs 4301
45. Contract Financing 4501
47. Miscellaneous 4701

AMENDMENTS

2011—Pub. L. 112–81, div. A, title VIII, § 864(b)(2), Dec. 31, 2011, 125 Stat. 1524, added item for chapter 12.

DIVISION A—GENERAL

CHAPTER 1—DEFINITIONS

SUBCHAPTER I—SUBTITLE DEFINITIONS

Sec.
101. Administrator.
102. Commercial component.
103. Commercial item.
104. Commercially available off-the-shelf item.
105. Component.
106. Federal Acquisition Regulation.
107. Full and open competition.
108. Item and item of supply.
109. Major system.
110. Nondevelopmental item.
111. Procurement.
112. Procurement system.
113. Responsible source.
114. Standards.
115. Supplies.
116. Technical data.

SUBCHAPTER II—DIVISION B DEFINITIONS

131. Acquisition.
132. Competitive procedures.
133. Executive agency.
134. Simplified acquisition threshold.

SUBCHAPTER III—DIVISION C DEFINITIONS

151. Agency head.
152. Competitive procedures.
153. Simplified acquisition threshold for contract in support of humanitarian or peacekeeping operation.

SUBCHAPTER I—SUBTITLE DEFINITIONS

§ 101. Administrator

In this subtitle, the term ''Administrator'' means the Administrator for Federal Procurement Policy appointed under section 1102 of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101	no source.	

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–194, § 1, Oct. 5, 2012, 126 Stat. 1445, provided that: ''This Act [enacting section 1909 of this title, amending section 2784 of Title 10, Armed Forces, enacting provisions set out as notes under section 1909 of this title and section 5701 of Title 5, Government Organization and Employees, and amending provisions set out as a note under section 5701 of Title 5] may be cited as the 'Government Charge Card Abuse Prevention Act of 2012'.''

SHORT TITLE OF 2008 ACT

Pub. L. 110–417, [div. A], title VIII, § 861, Oct. 14, 2008, 122 Stat. 4546, provided that: ''This subtitle [subtitle G (§§ 861–874) of title VIII of Pub. L. 110–417, see Tables for classification] may be cited as the 'Clean Contracting Act of 2008'.''

Pub. L. 110–252, title VI, § 6101, June 30, 2008, 122 Stat. 2386, provided that: ''This chapter [chapter 1 (§§ 6101–6103) of title VI of Pub. L. 110–252, see Tables for classification] may be cited as the 'Close the Contractor Fraud Loophole Act'.''

SHORT TITLE OF 2003 ACT

Pub. L. 108–136, div. A, title XIV, § 1401, Nov. 24, 2003, 117 Stat. 1663, provided that: ''This title [see Tables for classification] may be cited as the 'Services Acquisition Reform Act of 2003'.''

SHORT TITLE OF 1996 ACT

Pub. L. 104–106, div. D, § 4001, Feb. 10, 1996, 110 Stat. 642, as amended by Pub. L. 104–208, div. A, title I, § 101(f) [title VIII, § 808(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–393, provided that: ''This division [div. D (§§ 4001–4402) of Pub. L. 104–106, see Tables for classification] and division E [§§ 5001–5703 of Pub. L. 104–106, repealed and reenacted, generally, as subtitle III (§ 11101 et seq.) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, see Tables for complete classification] may be cited as the 'Clinger-Cohen Act of 1996'.''

SHORT TITLE OF 1994 ACT

Pub. L. 103–355, § 1, Oct. 13, 1994, 108 Stat. 3243, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Acquisition Streamlining Act of 1994'.''

SHORT TITLE OF 1988 ACT

Pub. L. 100–679, § 1, Nov. 17, 1988, 102 Stat. 4055, provided that: ''This Act [see Tables for classification] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1988'.''

Pub. L. 100–418, title VII, § 7001, Aug. 23, 1988, 102 Stat. 1545, provided that: ''This title [see Tables for classification] may be cited as the 'Buy American Act of 1988'.''

SHORT TITLE OF 1986 ACT

Pub. L. 99–634, § 1, Nov. 7, 1986, 100 Stat. 3523, provided: ''That this Act [see Tables for classification] may be cited as the 'Anti-Kickback Enforcement Act of 1986'.''

SHORT TITLE OF 1984 ACT

Pub. L. 98–577, § 1, Oct. 30, 1984, 98 Stat. 3066, provided that this Act [see Tables for classification] may be cited as the ''Small Business and Federal Procurement Competition Enhancement Act of 1984''.

Pub. L. 98–369, div. B, title VII, § 2701, July 18, 1984, 98 Stat. 1175, provided that: ''This title [see Tables for classification] may be cited as the 'Competition in Contracting Act of 1984'.''

SHORT TITLE OF 1983 ACT

Pub. L. 98–191, § 1, Dec. 1, 1983, 97 Stat. 1325, provided: ''That this Act [see Tables for classification] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1983'.''

SHORT TITLE OF 1979 ACT

Pub. L. 96–83, § 1(a), Oct. 10, 1979, 93 Stat. 648, provided that: ''This Act [see Tables for classification] may be

cited as the 'Office of Federal Procurement Policy Act Amendments of 1979'.''

SHORT TITLE OF 1974 ACT

Pub. L. 93–400, § 1(a), Aug. 30, 1974, 88 Stat. 796, as amended by Pub. L. 103–355, title X, § 10005(a)(1), Oct. 13, 1994, 108 Stat. 3406, provided that: ''This Act [see Tables for classification] may be cited as the 'Office of Federal Procurement Policy Act'.''

SHORT TITLE OF 1949 ACT

Act June 30, 1949, ch. 288, § 1(a), 63 Stat. 377, as amended by Pub. L. 103–355, title X, § 10005(a)(2), Oct. 13, 1994, 108 Stat. 3406; Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304; Pub. L. 108–178, § 2(b)(1), Dec. 15, 2003, 117 Stat. 2640, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Property and Administrative Services Act of 1949'.''

[Pub. L. 107–217, § 6(b), which had repealed section 1(a) of act June 30, 1949, set out above, was itself repealed effective Aug. 21, 2002, by Pub. L. 108–178, § 2(b)(1), insofar as it related to section 1(a) of act June 30, 1949, and Pub. L. 108–178, § 2(b)(1), further provided that section 1(a) of act June 30, 1949, was revived to read as if Pub. L. 107–217, § 6(b), had not been enacted.]

SHORT TITLE OF 1936 ACT

Act June 30, 1936, ch. 881, § 14, formerly § 12, as added by Pub. L. 103–355, title X, § 10005(f)(5), Oct. 13, 1994, 108 Stat. 3409; renumbered § 14, Pub. L. 104–106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675, provided that: ''This Act [see Tables for classification] may be cited as the 'Walsh-Healey Act'.''

SHORT TITLE OF 1933 ACT

Act Mar. 3, 1933, ch. 212, title III, § 7, formerly § 5, as added by Pub. L. 103–355, title X, § 10005(f)(4), Oct. 13, 1994, 108 Stat. 3409; renumbered § 7 and amended by Pub. L. 104–106, div. D, title XLIII, § 4321(a)(11), Feb. 10, 1996, 110 Stat. 671, provided that: ''This title [see Tables for classification] may be cited as the 'Buy American Act'.''

§ 102. Commercial component

In this subtitle, the term ''commercial component'' means a component that is a commercial item.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3678.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
102	41:259(c)(13).	June 30, 1949, ch. 288, title III, § 309(c)(13), as added Pub. L. 98–369, title VII, § 2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, § 504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, § 1551, Oct. 13, 1994, 108 Stat. 3299.
	41:264a (''commercial component'').	June 30, 1949, ch. 288, title III, § 314A (''commercial component''), as added Pub. L. 103–355, title VIII, § 8202, Oct. 13, 1994, 108 Stat. 3394.
	41:403(15).	Pub. L. 93–400, § 4(15), as added Pub. L. 103–355, title VIII, § 8001(a), Oct. 13, 1994, 108 Stat. 3386.

§ 103. Commercial item

In this subtitle, the term ''commercial item'' means—

(1) an item, other than real property, that—

(A) is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes; and

(B) has been sold, leased, or licensed, or offered for sale, lease, or license, to the general public;

(2) an item that—

(A) evolved from an item described in paragraph (1) through advances in technology or performance; and

(B) is not yet available in the commercial marketplace but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Federal Government solicitation;

(3) an item that would satisfy the criteria in paragraph (1) or (2) were it not for—

(A) modifications of a type customarily available in the commercial marketplace; or

(B) minor modifications made to meet Federal Government requirements;

(4) any combination of items meeting the requirements of paragraph (1), (2), (3), or (5) that are of a type customarily combined and sold in combination to the general public;

(5) installation services, maintenance services, repair services, training services, and other services if—

(A) those services are procured for support of an item referred to in paragraph (1), (2), (3), or (4), regardless of whether the services are provided by the same source or at the same time as the item; and

(B) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions;

(7) any item, combination of items, or service referred to in paragraphs (1) to (6) even though the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) a nondevelopmental item if the procuring agency determines, in accordance with conditions in the Federal Acquisition Regulation, that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple State and local governments.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3679.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
103	41:259(c)(11).	June 30, 1949, ch. 288, title III, § 309(c)(11), as added Pub. L. 98–369, title VII, § 2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, § 504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, § 1551, Oct. 13, 1994, 108 Stat. 3299.
	41:264a (''commercial item'').	June 30, 1949, ch. 288, title III, § 314A (''commercial item''), as added Pub. L. 103–355, title VIII, § 8202, Oct. 13, 1994, 108 Stat. 3394.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	41:403(12).	Pub. L. 93–400, §4(12), as added Pub. L. 103–355, title VIII, §8001(a), Oct. 13, 1994, 108 Stat. 3385; Pub. L. 104–106, title XLII, §4204, Feb. 10, 1996, 110 Stat. 655; Pub. L. 106–65, title VIII, §805, Oct. 5, 1999, 113 Stat. 705; Pub. L. 108–136, title XIV, §1433, Nov. 24, 2003, 117 Stat. 1673.

§ 104. Commercially available off-the-shelf item

In this subtitle, the term ''commercially available off-the-shelf item''—

(1) means an item that—

(A) is a commercial item (as described in section 103(1) of this title);

(B) is sold in substantial quantities in the commercial marketplace; and

(C) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace; but

(2) does not include bulk cargo, as defined in section 40102(4) of title 46, such as agricultural products and petroleum products.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3679.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
104	41:431(c).	Pub. L. 93–400, §35(c), as added Pub. L. 104–106, title XLII, §4203(a), Feb. 10, 1996, 110 Stat. 655.

In paragraph (2), the words ''section 40102(4) of title 46'' are substituted for ''section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)'' because of section 18(c) of Public Law 109–304 (46 U.S.C. note prec. 101).

§ 105. Component

In this subtitle, the term ''component'' means an item supplied to the Federal Government as part of an end item or of another component.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3680.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
105	41:259(c)(14).	June 30, 1949, ch. 288, title III, §309(c)(14), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:264a (''component'').	June 30, 1949, ch. 288, title III, §314A (''component''), as added Pub. L. 103–355, title VIII, §8202, Oct. 13, 1994, 108 Stat. 3394.
	41:403(14).	Pub. L. 93–400, §4(14), as added Pub. L. 103–355, title VIII, §8001(a), Oct. 13, 1994, 108 Stat. 3386.

§ 106. Federal Acquisition Regulation

In this subtitle, the term ''Federal Acquisition Regulation'' means the regulation issued under section 1303(a)(1) of this title.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3680.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
106	41:259(e).	June 30, 1949, ch. 288, title III, §309(e), as added Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.

The defined term is made applicable to the subtitle because of the numerous references throughout the Office of Federal Procurement Policy Act (Public Law 93–400, 88 Stat. 796), restated in division B of this subtitle, and especially because of sections 6(a) and 25(c) of the Act, restated in sections 1121 and 1303, respectively.

§ 107. Full and open competition

In this subtitle, the term ''full and open competition'', when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3680.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
107	41:259(c)(4).	June 30, 1949, ch. 288, title III, §309(c)(4), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(6).	Pub. L. 93–400, §4(6), formerly §4(7), as added Pub. L. 98–369, title VII, §2731(3), July 18, 1984, 98 Stat. 1195; Pub. L. 98–577, title I, §102(1), Oct. 30, 1984, 98 Stat. 3067; redesignated as §4(6), Pub. L. 100–679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, §8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§ 108. Item and item of supply

In this subtitle, the terms ''item'' and ''item of supply''—

(1) mean an individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, including spare parts and replenishment spare parts; but

(2) do not include packaging or labeling associated with shipment or identification of an item.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3680.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
108	41:259(c)(8), (9).	June 30, 1949, ch. 288, title III, §309(c)(8), (9), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	41:403(10) (''item'', ''item of supply'').	Pub. L. 93–400, §4(10) (''item'', ''item of supply''), formerly §4(11), as added Pub. L. 98–577, title I, §102(3), Oct. 30, 1984, 98 Stat. 3067; redesignated as §4(10), Pub. L. 100–679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, §8001(b)(1), (2), (4), Oct. 13, 1994, 108 Stat. 3386.

§109. Major system

(a) IN GENERAL.—In this subtitle, the term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. These elements may include hardware, equipment, software, or a combination of hardware, equipment, and software, but do not include construction or other improvements to real property.

(b) SYSTEM DEEMED TO BE MAJOR SYSTEM.—A system is deemed to be a major system if—

(1) the Department of Defense is responsible for the system and the total expenditures for research, development, testing, and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300,000,000 (based on fiscal year 1980 constant dollars);

(2) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed the greater of $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a major system established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled ''Major Systems Acquisitions''; or

(3) the head of the agency responsible for the system designates the system a major system.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3680.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
109	41:259(c)(7).	June 30, 1949, ch. 288, title III, §309(c)(7), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(9).	Pub. L. 93–400, §4(9), formerly §4(10), as added Pub. L. 98–577, title I, §102(3), Oct. 30, 1984, 98 Stat. 3067; redesignated as §4(9), Pub. L. 100–679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, §8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§110. Nondevelopmental item

In this subtitle, the term ''nondevelopmental item'' means—

(1) a commercial item;

(2) a previously developed item of supply that is in use by a department or agency of the Federal Government, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(3) an item of supply described in paragraph (1) or (2) that requires only minor modification or modification of the type customarily available in the commercial marketplace to meet the requirements of the procuring department or agency; or

(4) an item of supply currently being produced that does not meet the requirements of paragraph (1), (2), or (3) solely because the item is not yet in use.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3680.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
110	41:259(c)(12).	June 30, 1949, ch. 288, title III, §309(c)(12), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:264a (''nondevelopmental item'').	June 30, 1949, ch. 288, title III, §314A (''nondevelopmental item''), as added Pub. L. 103–355, title VIII, §8202, Oct. 13, 1994, 108 Stat. 3394.
	41:403(13).	Pub. L. 93–400, §4(13), as added Pub. L. 103–355, title VIII, §8001(a), Oct. 13, 1994, 108 Stat. 3385.

§111. Procurement

In this subtitle, the term ''procurement'' includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3681.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
111	41:259(c)(1).	June 30, 1949, ch. 288, title III, §309(c)(1), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3298.
	41:403(2).	Pub. L. 93–400, §4(2), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, §3, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, §4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 103–355, title VIII, §8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§112. Procurement system

In this subtitle, the term ''procurement system'' means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3681.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
112	41:259(c)(2).	June 30, 1949, ch. 288, title III, §309(c)(2), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(3).	Pub. L. 93–400, §4(3), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, §3, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, §4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 103–355, title VIII, §8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§ 113. Responsible source

In this subtitle, the term ''responsible source'' means a prospective contractor that—

(1) has adequate financial resources to perform the contract or the ability to obtain those resources;

(2) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(3) has a satisfactory performance record;

(4) has a satisfactory record of integrity and business ethics;

(5) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain the organization, experience, controls, and skills;

(6) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain the equipment and facilities; and

(7) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3681.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
113	41:259(c)(5).	June 30, 1949, ch. 288, title III, §309(c)(5), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(7).	Pub. L. 93–400, §4(7), formerly §4(8), as added Pub. L. 98–369, title VII, §2731(3), July 18, 1984, 98 Stat. 1195; Pub. L. 98–577, title I, §102(2), Oct. 30, 1984, 98 Stat. 3067; redesignated as §4(7), Pub. L. 100–679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, §8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§ 114. Standards

In this subtitle, the term ''standards'' means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of the system.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3681.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
114	41:259(c)(3).	June 30, 1949, ch. 288, title III, §309(c)(3), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(4).	Pub. L. 93–400, §4(4), formerly §4(5), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, §3, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, §4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 98–369, title VII, §2731(2), July 18, 1984, 98 Stat. 1195; redesignated as §4(4), Pub. L. 100–679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, §8001(b)(1), (2), (4), Oct. 13, 1994, 108 Stat. 3386.

§ 115. Supplies

In this subtitle, the term ''supplies'' has the same meaning as the terms ''item'' and ''item of supply''.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3681.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
115	41:259(c)(10).	June 30, 1949, ch. 288, title III, §309(c)(10) (''supplies''), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(10) (''supplies'').	Pub. L. 93–400, §4(10) (''supplies''), formerly §4(11), as added Pub. L. 98–577, title I, §102(3), Oct. 30, 1984, 98 Stat. 3067; redesignated as §4(10), Pub. L. 100–679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, §8001(b)(1), (2), (4), Oct. 13, 1994, 108 Stat. 3386.

§ 116. Technical data

In this subtitle, the term ''technical data''—

(1) means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency; but

(2) does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3681.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
116	41:259(c)(6).	June 30, 1949, ch. 288, title III, §309(c)(6), as added Pub. L. 98–369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	41:403(8).	Pub. L. 93–400, § 4(8), formerly § 4(9), as added Pub. L. 98–577, title I, § 102(3), Oct. 30, 1984, 98 Stat. 3067; redesignated as § 4(8), Pub. L. 100–679, § 3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, § 8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

SUBCHAPTER II—DIVISION B DEFINITIONS

§ 131. Acquisition

In division B, the term ''acquisition''—

(1) means the process of acquiring, with appropriated amounts, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

(2) includes—

(A) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;

(B) the description of requirements to satisfy agency needs;

(C) solicitation and selection of sources;

(D) award of contracts;

(E) contract performance;

(F) contract financing;

(G) management and measurement of contract performance through final delivery and payment; and

(H) technical and management functions directly related to the process of fulfilling agency requirements by contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3682.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
131	41:403(16).	Pub. L. 93–400, § 4(16), as added Pub. L. 108–136, title XIV, § 1411, Nov. 24, 2003, 117 Stat. 1663.

§ 132. Competitive procedures

In division B, the term ''competitive procedures'' means procedures under which an agency enters into a contract pursuant to full and open competition.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3682.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
132	41:403(5).	Pub. L. 93–400, § 4(5), formerly § 4(6), as added Pub. L. 98–369, title VII, § 2731(3), July 18, 1984, 98 Stat. 1195; redesignated as § 4(5), Pub. L. 100–679, § 3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103–355, title VIII, § 8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§ 133. Executive agency

In division B, the term ''executive agency'' means—

(1) an executive department specified in section 101 of title 5;

(2) a military department specified in section 102 of title 5;

(3) an independent establishment as defined in section 104(1) of title 5; and

(4) a wholly owned Government corporation fully subject to chapter 91 of title 31.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3682.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
133	41:403(1).	Pub. L. 93–400, § 4(1), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, § 3, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, § 4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 103–355, title VIII, § 8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§ 134. Simplified acquisition threshold

In division B, the term ''simplified acquisition threshold'' means $100,000.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3682.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
134	41:403(11).	Pub. L. 93–400, § 4(11), as added Pub. L. 101–510, title VIII, § 806(a)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103–355, title IV, § 4001, title VIII, § 8001(b)(1), (2), Oct. 13, 1994, 108 Stat. 3338, 3386.

SUBCHAPTER III—DIVISION C DEFINITIONS

DEFINITIONS

For additional definitions of terms used in division C of this subtitle, with certain exceptions, see section 102 of Title 40, Public Buildings, Property, and Works.

§ 151. Agency head

In division C, the term ''agency head'' means the head or any assistant head of an executive agency, and may at the option of the Administrator of General Services include the chief official of any principal organizational unit of the General Services Administration.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3682.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
151	41:259(a).	June 30, 1949, ch. 288, title III, § 309(a), 63 Stat. 397.

§ 152. Competitive procedures

In division C, the term ''competitive procedures'' means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of those proposals;

(3) the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

(B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for those procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of that Act (15 U.S.C. 638).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3683.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
152	41:259(b).	June 30, 1949, ch. 288, § 309(b), as added Pub. L. 98–369, title VII, § 2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98–577, § 504(a)(3), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 105–85, title X, § 1073(g)(1), Nov. 18, 1997, 111 Stat. 1906.

§ 153. Simplified acquisition threshold for contract in support of humanitarian or peacekeeping operation

(1) IN GENERAL.—In division C, the term ''simplified acquisition threshold'' has the meaning provided that term in section 134 of this title, except that, in the case of a contract to be awarded and performed, or purchase to be made, outside the United States in support of a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in section 134 of this title.

(2) DEFINITION.—In paragraph (1), the term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3683.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
153(1)	41:259(d)(1).	June 30, 1949, ch. 288, title III, § 309(d)(1), as added Pub. L. 103–355, title I, § 1551, Oct. 13, 1994, 108 Stat. 3299; Pub. L. 104–201, title VIII, § 807(b)(1), (2), Sept. 23, 1996, 110 Stat. 2606.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
153(2)	41:259(d)(2).	June 30, 1949, ch. 288, title III, § 309(d)(2), as added Pub. L. 104–201, title VIII, § 807(b)(3), Sept. 23, 1996, 110 Stat. 2606.

In paragraph (1), the words ''a contingency operation or'', and the text of 41 U.S.C. 259(d)(2)(A), are omitted because the increased simplified acquisition threshold established under section 32A of the Office of Federal Procurement Policy Act (Public Law 93–400) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation supersedes the threshold established under this section. Section 32A is restated as section 1903 of the revised title.

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

CHAPTER 11—ESTABLISHMENT OF OFFICE AND AUTHORITY AND FUNCTIONS OF ADMINISTRATOR

SUBCHAPTER I—GENERAL

Sec.
1101. Office of Federal Procurement Policy.
1102. Administrator.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

1121. General authority.
1122. Functions.
1123. Small business concerns.
1124. Tests of innovative procurement methods and procedures.
1125. Recipients of Federal grants or assistance.
1126. Policy regarding consideration of contractor past performance.
1127. Determining benchmark compensation amount.
1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services.
1129. Center of excellence in contracting for services.
1130. Effect of division on other law.
1131. Annual report.

AMENDMENT OF ANALYSIS

Pub. L. 113–67, div. A, title VII, § 702(b)(2), (c), Dec. 26, 2013, 127 Stat. 1189, provided that, applicable only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, this analysis is amended by striking out item 1127. See 2013 Amendment note below.

Pub. L. 113–66, div. A, title VIII, § 811(c)(2), (d), Dec. 26, 2013, 127 Stat. 806, provided that, applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, this analysis is amended by striking out item 1127. See 2013 Amendment note below.

AMENDMENTS

2013—Pub. L. 113–66, div. A, title VIII, § 811(c)(2), Dec. 26, 2013, 127 Stat. 806, and Pub. L. 113–67, div. A, title VII, § 702(b)(2), Dec. 26, 2013, 127 Stat. 1189, struck out item 1127 ''Determining benchmark compensation amount''.

SUBCHAPTER I—GENERAL

§ 1101. Office of Federal Procurement Policy

(a) ORGANIZATION.—There is an Office of Federal Procurement Policy in the Office of Management and Budget.

(b) PURPOSES.—The purposes of the Office of Federal Procurement Policy are to—

(1) provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies; and

(2) promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(c) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be appropriated each fiscal year for the Office of Federal Procurement Policy to carry out the responsibilities of the Office for that fiscal year.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3684.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1101(a), (b)	41:404(a).	Pub. L. 93–400, § (5)(a), Aug. 30, 1974, 88 Stat. 797; Pub. L. 104–106, title XLIII, § 4305(a)(1), Feb. 10, 1996, 110 Stat. 665.
1101(c)	41:410.	Pub. L. 93–400, § 11, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96–83, § 7, Oct. 10, 1979, 93 Stat 651; Pub. L. 98–191, § 6, Dec. 1, 1983, 97 Stat 1329; Pub. L. 100–679, § 3(b), Nov. 17, 1988, 102 Stat 4056; Pub. L. 104–106, title XLIII, § 4305(c)(2), Feb. 10, 1996, 110 Stat. 665.

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 ([former] 41 U.S.C. 401 et seq.) [see this division (except sections 1123, 2303, 2304, and 2313)], 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.

§ 1102. Administrator

(a) HEAD OF OFFICE.—The head of the Office of Federal Procurement Policy is the Administrator for Federal Procurement Policy.

(b) APPOINTMENT.—The Administrator is appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3684.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1102	41:404(b).	Pub. L. 93–400, § (5)(b), Aug. 30, 1974, 88 Stat. 797.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

§ 1121. General authority

(a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

(b) FEDERAL ACQUISITION REGULATION.—To the extent that the Administrator considers appropriate in carrying out the policies and functions set forth in this division, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. The policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation.

(c) POLICIES TO BE FOLLOWED BY EXECUTIVE AGENCIES.—

(1) AREAS OF PROCUREMENT FOR WHICH POLICIES ARE TO BE FOLLOWED.—The policies implemented in the Federal Acquisition Regulation shall be followed by executive agencies in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property.

(2) PROCEDURES TO ENSURE COMPLIANCE.—The Administrator shall establish procedures to ensure compliance with the Federal Acquisition Regulation by all executive agencies.

(3) APPLICATION OF OTHER LAWS.—The authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in this section and sections 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title.

(d) WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO ACT.—In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures, and forms in a timely manner, including regulations, procedures, and forms necessary to implement prescribed policy the Administrator initiates under subsection (b), the Administrator, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this division, shall pre-

scribe Government-wide regulations, procedures, and forms which executive agencies shall follow in procuring items listed in subsection (c)(1).

(e) OVERSIGHT OF PROCUREMENT REGULATIONS OF OTHER AGENCIES.—The Administrator, with the concurrence of the Director of the Office of Management and Budget, and with consultation with the head of the agency concerned, may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that the rule or regulation is inconsistent with any policies, regulations, or procedures issued pursuant to subsection (b).

(f) LIMITATION ON AUTHORITY.—The authority of the Administrator under this division shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications for the property, services, or construction; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3684.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1121(a)–(c)(1).	41:405(a).	Pub. L. 93–400, § 6(a), 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. 1326; Pub. L. 100–679, § 3(a)(1), Nov. 17, 1988, 102 Stat. 4055.
1121(c)(2)	41:405a (1st sentence).	Pub. L. 95–507, title II, § 222 (1st sentence), Oct. 24, 1978, 92 Stat. 1771.
1121(c)(3)	41:408.	Pub. L. 93–400, § 9, Aug. 30, 1974, 88 Stat. 799.
1121(d)	41:405(b).	Pub. L. 93–400, § 6(b), 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. 1327; Pub. L. 100–679, § 3(a)(2), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 104–106, title XLIII, § 4322(a)(1), Feb. 10, 1996, 110 Stat. 677.
1121(e)	41:405(f).	Pub. L. 93–400, § 6(f), 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; Pub. L. 100–679, § 3(a)(4), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104–201, title X, § 1074(f)(1), Sept. 23, 1996, 110 Stat. 2661.
1121(f)	41:405(c).	Pub. L. 93–400, § 6(c), 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. 1327.

In subsection (c)(2), the text of 41:405a (1st sentence relating to promulgating a single, simplified, uniform Federal procurement regulation) is omitted as superseded by 41:405(a) because of section 11 of the Office of Federal Procurement Policy Act Amendments of 1979 (Public Law 96–83, 93 Stat. 652).

SUPERSEDURE OF INCONSISTENT STATUTORY PROVISIONS

Pub. L. 96–83, § 11, Oct. 10, 1979, 93 Stat. 652, provided that: ''The provisions of the Act [Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, see this division (except sections 1123, 2303, 2304, and 2313)] as amended by this Act [see Short Title of 1979 Act note set out under section 101 of this title] shall supersede the provisions of section 222 of the Act of October 24, 1978, entitled 'An Act to amend the Small Business Act and the Small Business Investment Act of 1958' ([former] 41 U.S.C. 405a) [now 41 U.S.C. 1121(c)(2), 1123] to the extent they are inconsistent therewith.''

FEDERAL SUPPORT FOR ENHANCEMENT OF STATE AND LOCAL ANTI-TERRORISM RESPONSE CAPABILITIES

Pub. L. 108–136, div. A, title VIII, § 803, Nov. 24, 2003, 117 Stat. 1541, provided that:

''(a) PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND SERVICES BY STATE AND LOCAL GOVERNMENTS.—The Administrator for Federal Procurement Policy shall establish a program under which States and units of local government may procure through contracts entered into by the Department of Defense or the Department of Homeland Security anti-terrorism technologies or anti-terrorism services for the purpose of preventing, detecting, identifying, deterring, or recovering from acts of terrorism.

''(b) AUTHORITIES.—Under the program, the Secretary of Defense and the Secretary of Homeland Security may, but shall not be required to, award contracts using the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration.

''(c) DEFINITION.—In this section, the term 'State or local government' has the meaning provided in section 502(c)(3) of title 40, United States Code.''

PROFIT METHODOLOGY STUDY

Pub. L. 100–679, § 7, Nov. 17, 1988, 102 Stat. 4068, provided that:

''(a) IN GENERAL.—The Administrator shall conduct a study to develop a consistent methodology which executive agencies should use for measuring the profits earned by government contractors on procurements, other than procurements where the price is based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public.

''(b) CONTRACTORS' FINANCIAL DATA.—The methodology developed under subsection (a) shall include adequate procedures for verifying and maintaining the confidentiality of contractors' financial data.''

§ 1122. Functions

(a) IN GENERAL.—The functions of the Administrator include—

(1) providing leadership and ensuring action by the executive agencies in establishing, developing, and maintaining the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in developing simplified Government-wide procurement regulations, procedures, and forms;

(2) coordinating the development of Government-wide procurement system standards that executive agencies shall implement in their procurement systems;

(3) providing leadership and coordination in formulating the executive branch position on legislation relating to procurement;

(4)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for those activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and

(B) ensuring executive agency compliance with the record requirements of section 1712 of this title;

(5) providing for and directing the activities of the Federal Acquisition Institute established under section 1201 of this title, including recommending to the Administrator of General Services a sufficient budget for such activities.[1]

(6) administering section 1703(a) to (i) of this title;

(7) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(8) developing standard contract forms and contract language in order to reduce the Federal Government's cost of procuring property and services and the private sector's cost of doing business with the Federal Government;

(9) providing for a Government-wide award to recognize and promote vendor excellence;

(10) providing for a Government-wide award to recognize and promote excellence in officers and employees of the Federal Government serving in procurement-related positions;

(11) developing policies, in consultation with the Administrator of the Small Business Administration, that ensure that small businesses, qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women are provided with the maximum practicable opportunities to participate in procurements that are conducted for amounts below the simplified acquisition threshold;

(12) developing policies that will promote achievement of goals for participation by small businesses, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women; and

(13) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(b) CONSULTATION AND ASSISTANCE.—In carrying out the functions in subsection (a), the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) with the concurrence of the heads of affected executive agencies, may designate one or more executive agencies to assist in performing those functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in performing any other function the Administrator considers appropriate.

(c) ASSIGNMENT, DELEGATION, OR TRANSFER.—

(1) TO ADMINISTRATOR.—Except as otherwise provided by law, only duties, functions, or responsibilities expressly assigned by this division shall be assigned, delegated, or transferred to the Administrator.

(2) BY ADMINISTRATOR.—

(A) WITHIN OFFICE.—The Administrator may make and authorize delegations within the Office of Federal Procurement Policy that the Administrator determines to be necessary to carry out this division.

(B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator may delegate, and authorize successive redelegations of, an authority, function, or power of the Administrator under this division (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out the policy) to another executive agency with the consent of the head of the executive agency or at the direction of the President.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3685; Pub. L. 112–81, div. A, title VIII, § 864(b)(3), Dec. 31, 2011, 125 Stat. 1524.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1122(a)	41:405(d).	Pub. L. 93–400, § 6(d), 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. 1327; Pub. L. 100–679, § 3(a)(3), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 103–355, title V, § 5091, title VII, § 7108, Oct. 13, 1994, 108 Stat. 3361, 3378; Pub. L. 104–106, title XLIII, §§ 4307(b), 4321(h)(1), (2), Feb. 10, 1996, 110 Stat. 668, 675; Pub. L. 105–85, title X, § 1073(g)(2)(B), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–135, title VI, § 604(f)(1), Dec. 2, 1997, 111 Stat. 2634.
1122(b)	41:405(e).	Pub. L. 93–400, § 6(e), 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; Pub. L. 98–369, title VII, § 2732(b)(1), July 18, 1984, 98 Stat. 1199.
1122(c)(1)	41:405(g).	Pub. L. 93–400, § 6(g), 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.
1122(c)(2)(A)	41:411(b).	Pub. L. 93–400, § 12, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96–83, § 8, Oct. 10, 1979, 93 Stat. 652; Pub. L. 98–191, § 8(c), Dec. 1, 1983, 97 Stat. 1331.
1122(c)(2)(B)	41:411(a).	

In clause (12), the words "small business concerns owned and controlled by service-disabled veterans" are added to conform to section 15(g)(1) of the Small Business Act (15:644(g)(1)).

AMENDMENTS

2011—Subsec. (a)(5). Pub. L. 112–81 amended par. (5) generally. Prior to amendment, par. (5) related to the purposes of the activities of the Federal Acquisition Institute.

PILOT PROGRAM TO INVENTORY COST AND SIZE OF SERVICE CONTRACTS

Pub. L. 110–161, div. D, title VII, § 748, Dec. 26, 2007, 121 Stat. 2035, provided that: "No later than 180 days after

[1] So in original. The period probably should be a semicolon.

enactment of this Act [Dec. 26, 2007], the Office of Management and Budget shall establish a pilot program to develop and implement an inventory to track the cost and size (in contractor manpower equivalents) of service contracts, particularly with respect to contracts that have been performed poorly by a contractor because of excessive costs or inferior quality, as determined by a contracting officer within the last five years, involve inherently governmental functions, or were undertaken without competition. The pilot program shall be established in at least three Cabinet-level departments, based on varying levels of annual contracting for services, as reported by the Federal Procurement Data System's Federal Procurement Report for fiscal year 2005, including at least one Cabinet-level department that contracts out annually for $10,000,000,000 or more in services, at least one Cabinet-level department that contracts out annually for between $5,000,000,000 and $9,000,000,000 in services, and at least one Cabinet-level department that contracts out annually for under $5,000,000,000 in services.''

REPORTING OF BUNDLED CONTRACT OPPORTUNITIES

Pub. L. 105–135, title IV, § 414, Dec. 2, 1997, 111 Stat. 2619, provided that:

''(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(d)(4)(A)) [now 41 U.S.C. 1122(a)(4)(A)] shall be modified to collect data regarding bundling of contract requirements when the contracting officer anticipates that the resulting contract price, including all options, is expected to exceed $5,000,000. The data shall reflect a determination made by the contracting officer regarding whether a particular solicitation constitutes a contract bundling.

''(b) DEFINITIONS.—In this section, the term 'bundling of contract requirements' has the meaning given that term in section 3(*o*) of the Small Business Act (15 U.S.C. 632(*o*)) (as added by section 412 of this subtitle).''

RESULTS-ORIENTED ACQUISITION PROCESS

Pub. L. 103–355, title V, § 5052, Oct. 13, 1994, 108 Stat. 3352, provided that:

''(a) DEVELOPMENT OF PROCESS REQUIRED.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal agencies, shall develop results-oriented acquisition process guidelines for implementation by agencies in acquisitions of property and services by the Federal agencies. The process guidelines shall include the identification of quantitative measures and standards for determining the extent to which an acquisition of items other than commercial items by a Federal agency satisfies the needs for which the items are being acquired.

''(b) INAPPLICABILITY OF PROCESS TO DEPARTMENT OF DEFENSE.—The process guidelines developed pursuant to subsection (a) may not be applied to the Department of Defense.''

DATA COLLECTION THROUGH FEDERAL PROCUREMENT DATA SYSTEM

Pub. L. 103–355, title X, § 10004, Oct. 13, 1994, 108 Stat. 3405, provided that:

''(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(d)(4)(A)) [now 41 U.S.C. 1122(a)(4)(A)] shall be modified to collect from contracts in excess of the simplified acquisition threshold data identifying the following matters:

''(1) Contract awards made pursuant to competitions conducted pursuant to section 2323 of title 10, United States Code, or section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, 15 U.S.C. 644 note].

''(2) Awards to business concerns owned and controlled by women.

''(3) Number of offers received in response to a solicitation.

''(4) Task order contracts.

''(5) Contracts for the acquisition of commercial items.

''(b) DEFINITION.—In this section, the term 'simplified acquisition threshold' has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(11)) [now 41 U.S.C. 134].''

§ 1123. Small business concerns

In formulating the Federal Acquisition Regulation and procedures to ensure compliance with the Regulation, the Administrator, in consultation with the Small Business Administration, shall—

(1) conduct analyses of the impact on small business concerns resulting from revised procurement regulations; and

(2) incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3687.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1123	41:405a (last sentence).	Pub. L. 95–507, title II, § 222 (last sentence), Oct. 24, 1978, 92 Stat. 1771.

§ 1124. Tests of innovative procurement methods and procedures

(a) IN GENERAL.—The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. In developing a program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

(1) ascertain the need for and specify the objectives of the program;

(2) develop the guidelines and procedures for carrying out the program and the criteria to be used in measuring the success of the program;

(3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under the program;

(4) select the appropriate executive agencies or components of executive agencies to carry out the program;

(5) specify the categories and types of products or services to be procured under the program; and

(6) develop the methods to be used to analyze the results of the program.

(b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out the program.

(c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines that it is necessary to waive the application of a provision of law to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit no-

tice of the proposed program to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and request that the Committees take the necessary action to provide that the provision of law does not apply with respect to the proposed program. The notification to Congress shall include—

(1) a description of the proposed program (including the scope and purpose of the proposed program);

(2) the procedures to be followed in carrying out the proposed program;

(3) the provisions of law affected and the application of any provision of law that must be waived in order to carry out the proposed program; and

(4) the executive agencies involved in carrying out the proposed program.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3688.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1124(a)	41:413(a) (1st, 2d sentences).	Pub. L. 93–400, § 15, as added Pub. L. 98–191, § 7, Dec. 1, 1983, 97 Stat. 1329; Pub. L. 104–201, title X, § 1074(f)(2), Sept. 23, 1996, 110 Stat. 2661.
1124(b)	41:413(a) (last sentence).	
1124(c)	41:413(b).	

In subsection (c), the words ''Committee on Oversight and Government Reform'' are substituted for ''Committee on Government Operations'' on authority of section 1(a)(6) of Public Law 104–14 (2 U.S.C. note prec. 21), Rule X(1)(h) of the Rules of the House of Representatives, adopted by House Resolution No. 5 (106th Congress, January 6, 1999), and Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007). The words ''Committee on Homeland Security and Governmental Affairs'' are substituted for ''Committee on Governmental Affairs'' on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004).

§ 1125. Recipients of Federal grants or assistance

(a) AUTHORITY.—With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms that the Administrator considers appropriate and that executive agencies shall follow in providing for the procurement, to the extent required under those programs, of property or services referred to in section 1121(c)(1) of this title by recipients of Federal grants or assistance under the programs.

(b) LIMITATION.—Subsection (a) does not—

(1) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to a recipient of a Federal grant or assistance; or

(2) authorize action by a recipient contrary to State and local law in the case of a program to provide a Federal grant or assistance to a State or political subdivision.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3688.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1125(a)	41:405(i)(1).	Pub. L. 93–400, § 6(i), 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.
1125(b)	41:405(i)(2).	

§ 1126. Policy regarding consideration of contractor past performance

(a) GUIDANCE.—The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include—

(1) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

(2) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary;

(3) policies for ensuring that—

(A) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, other departments and agencies of the Federal Government, agencies of State and local governments, and commercial customers; and

(B) the information submitted by offerors is considered; and

(4) the period for which information on past performance of offerors may be maintained and considered.

(b) INFORMATION NOT AVAILABLE.—If there is no information on past contract performance of an offeror or the information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3689.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1126(a)	41:405(j)(1).	Pub. L. 93–400, § 6(j), as added Pub. L. 103–355, title I, § 1091(b)(2), Oct. 13, 1994, 108 Stat. 3272.
1126(b)	41:405(j)(2).	

INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR EXECUTIVE AGENCY SOURCE SELECTION DECISIONS

Pub. L. 112–239, div. A, title VIII, § 853, Jan. 2, 2013, 126 Stat. 1856, provided that:

''(a) STRATEGY REQUIRED.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Federal Acquisition Regulatory Council shall develop

a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used by executive agencies for making source selection decisions.

''(2) CONSULTATION WITH USDATL.—In developing the strategy required by this subsection, the Federal Acquisition Regulatory Council shall consult with the Under Secretary of Defense for Acquisition, Technology, and Logistics to ensure that the strategy is, to the extent practicable, consistent with the strategy developed by the Under Secretary pursuant to section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1487; 10 U.S.C. 2302 note).

''(b) ELEMENTS.—The strategy required by subsection (a) shall, at a minimum—

''(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

''(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

''(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

''(c) CONTRACTOR COMMENTS.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Federal Acquisition Regulation shall be revised to require the following:

''(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

''(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

''(3) That agency evaluations of contractor past performance, including any comments, rebuttals, or additional information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

''(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

''(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Jan. 2, 2013], the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the actions taken by the Federal Acquisition Regulatory Council pursuant to this section, including an assessment of the following:

''(1) The extent to which the strategy required by subsection (a) is consistent with the strategy developed by the Under Secretary of Defense for Acquisition, Technology, and Logistics as described in subsection (a)(2).

''(2) The extent to which the actions of the Federal Acquisition Regulatory Council pursuant to this section have otherwise achieved the objectives of this section.

''(f) DEFINITIONS.—In this section:

''(1) The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

''(2) The term 'executive agency' has the meaning given that term in section 133 of title 41, United States Code, except that the term excludes the Department of Defense and the military departments.

''(3) The term 'Federal Acquisition Regulatory Council' means the Federal Acquisition Regulatory Council under section 1302(a) of title 41, United States Code.''

CONGRESSIONAL FINDINGS REGARDING CONSIDERATION OF PAST CONTRACT PERFORMANCE

Pub. L. 103–355, title I, §1091(b)(1), Oct. 13, 1994, 108 Stat. 3272, provided that: ''Congress makes the following findings:

''(A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding a contract.

''(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official.''

§ 1127. Determining benchmark compensation amount

(a) DEFINITIONS.—In this section:

(1) BENCHMARK COMPENSATION AMOUNT.—The term ''benchmark compensation amount'', for a fiscal year, is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (b) is made.

(2) BENCHMARK CORPORATION.—The term ''benchmark corporation'', with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of $50,000,000 for the fiscal year.

(3) COMPENSATION.—The term ''compensation'', for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

(4) FISCAL YEAR.—The term ''fiscal year'' means a fiscal year a contractor establishes for accounting purposes.

(5) PUBLICLY-OWNED UNITED STATES CORPORATION.—The term ''publicly-owned United States corporation'' means a corporation—

(A) organized under the laws of a State of the United States, the District of Columbia, Puerto Rico, or a possession of the United States; and

(B) whose voting stock is publicly traded.

(6) SENIOR EXECUTIVES.—The term ''senior executives'', with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

(b) DETERMINING BENCHMARK COMPENSATION AMOUNT.—For purposes of section 4304(a)(16) of this title and section 2324(e)(1)(P) of title 10, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for

each fiscal year. In making determinations under this subsection, the Administrator shall consult with the Director of the Defense Contract Audit Agency and other officials of executive agencies as the Administrator considers appropriate.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3689.)

REPEAL OF SECTION

Pub. L. 113–67, div. A, title VII, § 702(b)(1), (c), Dec. 26, 2013, 127 Stat. 1189, provided that, applicable only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, this section is repealed.

Pub. L. 113–66, div. A, title VIII, § 811(c)(1), (d), Dec. 26, 2013, 127 Stat. 806, provided that, applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, this section is repealed.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1127(a)(1)	41:435(b).	Pub. L. 93–400, § 39, as added Pub. L. 105–85, title VIII, § 808(c)(1), Nov. 18, 1997, 111 Stat. 1837; Pub. L. 105–261, title VIII, § 804(c)(1), Oct. 17, 1998, 112 Stat. 2083.
1127(a)(2)	41:435(c)(3).	
1127(a)(3)	41:435(c)(1).	
1127(a)(4)	41:435(c)(5).	
1127(a)(5)	41:435(c)(4).	
1127(a)(6)	41:435(c)(2).	
1127(b)	41:435(a).	

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 113–67 applicable only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 702(c) of Pub. L. 113–67, set out as an Effective Date of 2013 Amendment note under section 2324 of Title 10, Armed Forces.

Repeal by Pub. L. 113–66 applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 811(d) of Pub. L. 113–66, set out as an Effective Date of 2013 Amendment note under section 2324 of Title 10, Armed Forces.

EXCLUSIVE APPLICABILITY OF PROVISIONS LIMITING ALLOWABILITY OF COMPENSATION FOR CERTAIN CONTRACTOR PERSONNEL

Pub. L. 105–85, div. A, title VIII, § 808(f), Nov. 18, 1997, 111 Stat. 1838, provided that: ''Notwithstanding any other provision of law, no other limitation in law on the allowability of costs of compensation of senior executives under covered contracts shall apply to such costs of compensation incurred after January 1, 1998.''

DEFINITIONS FOR PURPOSES OF SECTION 808 OF PUB. L. 105–85

Pub. L. 105–85, div. A, title VIII, § 808(g), Nov. 18, 1997, 111 Stat. 1838, as amended by Pub. L. 105–261, div. A, title VIII, § 804(c)(2), Oct. 17, 1998, 112 Stat. 2083, provided that: ''In this section [see Tables for classification]:

''(1) The term 'covered contract' has the meaning given such term in section 2324(*l*) of title 10, United States Code, and section 306(*l*) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 256(*l*)) [see 41 U.S.C. 4301].

''(2) The terms 'compensation' and 'senior executives' have the meanings given such terms in section 2324(*l*) of title 10, United States Code, and section 306(m) of the Federal Property and Administrative Services Act of 1949 [see 41 U.S.C. 4301].''

§ 1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services

The Administrator, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Personnel Management, shall develop and implement a plan to ensure that the Federal Government maintains the necessary capability with respect to the acquisition of architectural and engineering services to—

(1) ensure that Federal Government employees have the expertise to determine agency requirements for those services;

(2) establish priorities and programs, including acquisition plans;

(3) establish professional standards;

(4) develop scopes of work; and

(5) award and administer contracts for those services.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1128	41:433 note.	Pub. L. 108–136, title XIV, § 1414, Nov. 24, 2003, 117 Stat. 1666.

§ 1129. Center of excellence in contracting for services

The Administrator shall maintain a center of excellence in contracting for services. The center shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1129	41:405 note.	Pub. L. 108–136, title XIV, § 1431(b), Nov. 24, 2003, 117 Stat. 1671.

The words ''Not later than 180 days after the date of the enactment of this Act'' are omitted, and the word ''maintain'' is substituted for ''establish'', to eliminate obsolete words.

§ 1130. Effect of division on other law

This division does not impair or affect the authorities or responsibilities relating to the procurement of real property conferred by division C of this subtitle and chapters 1 to 11 of title 40.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1130	41:405(h)(1).	Pub. L. 93–400, § 6(h)(1), 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; Pub. L. 104–106, title LVI, § 5607(d), Feb. 10, 1996, 110 Stat. 702.

§ 1131. Annual report

The Administrator annually shall submit to Congress an assessment of the progress made in executive agencies in implementing the policy regarding major acquisitions that is stated in section 3103(a) of this title. The Administrator shall use data from existing management systems in making the assessment.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3690.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1131	41:405(k).	Pub. L. 93–400, § 6(k), as added Pub. L. 103–355, title V, § 5051(b), Oct. 13, 1994, 108 Stat. 3351; Pub. L. 105–85, title VIII, § 851(b), Nov. 18, 1997, 111 Stat. 1851.

CHAPTER 12—FEDERAL ACQUISITION INSTITUTE

Sec.
1201. Federal Acquisition Institute.

§ 1201. Federal Acquisition Institute

(a) IN GENERAL.—There is established a Federal Acquisition Institute (FAI) in order to—

(1) foster and promote the development of a professional acquisition workforce Government-wide;

(2) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

(3) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;

(4) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

(5) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

(6) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

(7) evaluate the effectiveness of training and career development programs for acquisition personnel;

(8) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

(9) facilitate, to the extent requested by agencies, interagency intern and training programs;

(10) collaborate with other civilian agency acquisition training programs to leverage training supporting all members of the civilian agency acquisition workforce;

(11) assist civilian agencies with their acquisition and capital planning efforts; and

(12) perform other career management or research functions as directed by the Administrator.

(b) BUDGET RESOURCES AND AUTHORITY.—

(1) IN GENERAL.—The Administrator shall recommend to the Administrator of General Services sufficient budget resources and authority for the Federal Acquisition Institute to support Government-wide training standards and certification requirements necessary to enhance the mobility and career opportunities of the Federal acquisition workforce.

(2) ACQUISITION WORKFORCE TRAINING FUND.—Subject to the availability of funds, the Administrator of General Services shall provide the Federal Acquisition Institute with amounts from the acquisition workforce training fund established under section 1703(i) of this title sufficient to meet the annual budget for the Federal Acquisition Institute requested by the Administrator under paragraph (1).

(c) FEDERAL ACQUISITION INSTITUTE BOARD OF DIRECTORS.—

(1) REPORTING TO ADMINISTRATOR.—The Federal Acquisition Institute shall report through its Board of Directors directly to the Administrator.

(2) COMPOSITION.—The Board shall be composed of not more than 8 individuals from the Federal Government representing a mix of acquisition functional areas, all of whom shall be appointed by the Administrator.

(3) DUTIES.—The Board shall provide general direction to the Federal Acquisition Institute to ensure that the Institute—

(A) meets its statutory requirements;

(B) meets the needs of the Federal acquisition workforce;

(C) implements appropriate programs;

(D) coordinates with appropriate organizations and groups that have an impact on the Federal acquisition workforce;

(E) develops and implements plans to meet future challenges of the Federal acquisition workforce; and

(F) works closely with the Defense Acquisition University.

(4) RECOMMENDATIONS.—The Board shall make recommendations to the Administrator regarding the development and execution of the annual budget of the Federal Acquisition Institute.

(d) DIRECTOR.—The Director of the Federal Acquisition Institute shall be appointed by, be subject to the direction and control of, and report directly to the Administrator.

(e) ANNUAL REPORT.—The Administrator shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives an annual report on the projected budget needs and expense plans of the Federal Acquisition Institute to fulfill its mandate.

(Added Pub. L. 112–81, div. A, title VIII, § 864(b)(1), Dec. 31, 2011, 125 Stat. 1523.)

CONSTRUCTION

Pub. L. 112–81, div. A, title VIII, § 864(e), Dec. 31, 2011, 125 Stat. 1525, provided that: ''Nothing in this section

[enacting this chapter and amending sections 1122, 1703, and 1704 of this title], or the amendments made by this section, shall be construed to preclude the Secretary of Defense from establishing acquisition workforce policies, procedures, training standards, and certification requirements for acquisition positions in the Department of Defense, as provided in chapter 87 of title 10, United States Code.''

CHAPTER 13—ACQUISITION COUNCILS

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

Sec.
1301. Definition.
1302. Establishment and membership.
1303. Functions and authority.
1304. Contract clauses and certifications.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

1311. Establishment and membership.
1312. Functions.

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

§ 1301. Definition

In this subchapter, the term ''Council'' means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1301	41:403(17).	Pub. L. 93–400, § 4(17), as added Pub. L. 108–375, title VIII, § 807(b), Oct. 28, 2004, 118 Stat. 2011.

§ 1302. Establishment and membership

(a) ESTABLISHMENT.—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

(b) MEMBERSHIP.—

(1) MAKEUP OF COUNCIL.—The Council consists of—

(A) the Administrator;

(B) the Secretary of Defense;

(C) the Administrator of National Aeronautics and Space; and

(D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

(A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(c) of this title.

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1302(a)	41:421(a).	Pub. L. 93–400, § 25(a), (b), as added Pub. L. 100–679, § 4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 101–510, title VIII, § 807, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 104–106, title XLIII, § 4322(a)(2), Feb. 10, 1996, 110 Stat. 677.
1302(b)	41:421(b).	

In subsection (a), the words ''(hereinafter in this section referred to as the 'Council')'' are omitted as unnecessary.

In subsection (b)(2)(A)(i), the words ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' are substituted for ''Under Secretary of Defense for Acquisition and Technology'' because of section 911(a)(1) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65, 113 Stat. 717, 10 U.S.C. 133 note).

In subsection (b)(2)(A)(ii), the cross-reference to section 16(3) of the Office of Federal Procurement Policy Act (41:414(3)) is treated as a cross-reference to section 16(c) of the Act to reflect the amendment of section 16 by section 1421(a)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, 117 Stat. 1666).

STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102–190, div. A, title VIII, § 809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(b)(2)) [now 41 U.S.C. 1302(b)(2)], the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.''

§ 1303. Functions and authority

(a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.),[1] shall jointly issue and maintain in accordance with subsection (d) a single Government-wide pro-

[1] See References in Text note below.

curement regulation, to be known as the Federal Acquisition Regulation.

(2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to procurement issued by an executive agency shall be limited to—

(A) regulations essential to implement Government-wide policies and procedures within the agency; and

(B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with the Council, shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies prescribed pursuant to section 1121(b) of this title.

(4) REQUEST TO REVIEW REGULATION.—

(A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a person may request the Administrator to review a regulation relating to procurement on the basis that the regulation is inconsistent with the Federal Acquisition Regulation.

(B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its face, state a valid basis for the review, the Administrator shall complete the review not later than 60 days after receiving the request. The time for completion of the review may be extended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation otherwise should be revised to remove an inconsistency with the policies prescribed under section 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take other action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary to remove the inconsistency. If the Administrator determines that the regulation, although not inconsistent with the Federal Acquisition Regulation or those policies, should be revised to improve compliance with the Regulation or policies, the Administrator shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 as may be necessary and appropriate.

(6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the Administrator shall be in writing and made publicly available.

(b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

(1) IN GENERAL.—Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to section 1302(b) of this title shall—

(A) approve or disapprove all regulations relating to procurement that are proposed for public comment, prescribed in final form, or otherwise made effective by that agency before the regulation may be prescribed in final form, or otherwise made effective, except that the official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(B) carry out the responsibilities of that agency set forth in chapter 35 of title 44 for each information collection request that relates to procurement rules or regulations; and

(C) eliminate or reduce—

(i) any redundant or unnecessary levels of review and approval in the procurement system of that agency; and

(ii) redundant or unnecessary procurement regulations which are unique to that agency.

(2) LIMITATION ON DELEGATION.—The authority to review and approve or disapprove regulations under paragraph (1)(A) may not be delegated to an individual outside the office of the official who represents the agency on the Council pursuant to section 1302(b) of this title.

(c) GOVERNING POLICIES.—All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies prescribed under section 1121(b) of this title.

(d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION REGULATION.—Subject to section 1121(d) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3691.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1303(a)	41:421(c).	Pub. L. 93–400, § 25(c)–(f), as added Pub. L. 100–679, § 4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104–201, title VIII, § 822, title X, § 1074(f)(3), Sept. 23, 1996, 110 Stat. 2609, 2661; Pub. L. 105–85, title VIII, § 841(d), Nov. 18, 1997, 111 Stat. 1843.
1303(b)	41:421(d).	
1303(c)	41:421(e).	
1303(d)	41:421(f).	

In subsection (a)(6), the text of 41:421(c)(6) (last sentence) is omitted because 41:407 was repealed by section 4305(b) of the National Defense Authorization Act of Fiscal Year 1996 (Public Law 104–106, 110 Stat. 665).

In subsection (b)(1)(A), the words ''after 60 days after November 17, 1988'' are omitted as obsolete.

In subsection (b)(1)(B), the words ''(as that term is defined in section 3502(11) of title 44)'' are omitted because chapter 35 of title 44 was amended generally by the Paperwork Reduction Act of 1995 (Public Law 104–13, 109 Stat. 163) and 44:3502 no longer defines ''information collection request''. The term ''information collection request'' is retained in this section of the revised title, however, because 44:ch. 35 still contains provisions about requests for collection of information.

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (a)(1), is Pub. L. 85–568, July 29, 1958,

72 Stat. 426, which was classified principally to chapter 26 (§ 2451 et seq.) of Title 42, The Public Health and Welfare, and was substantially repealed and restated as chapter 201 (§ 20101 et seq.) of Title 51, National and Commercial Space Programs, by Pub. L. 111–314, §§ 3, 6, Dec. 18, 2010, 124 Stat. 3328, 3444. For complete classification of this Act to the Code, see Short Title of 1958 Act note set out under section 10101 of Title 51 and Tables.

§ 1304. Contract clauses and certifications

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

(A) the certification requirement is specifically imposed by statute; or

(B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term ''head of the executive agency'' with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) the certification requirement is specifically imposed by statute; or

(ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3693.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1304(a)	41:425(a).	Pub. L. 93–400, § 29, as added Pub. L. 103–355, title I, § 1093, Oct. 13, 1994, 108 Stat. 3273; Pub. L. 104–106, title XLIII, § 4301(b)(2)(A), (c), Feb. 10, 1996, 110 Stat. 657, 658.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1304(b)(1)	41:425(b).	
1304(b)(2), (3).	41:425(c).	

CURRENT CERTIFICATION REQUIREMENTS

Pub. L. 104–106, div. D, title XLIII, § 4301(b)(1), Feb. 10, 1996, 110 Stat. 656, provided that:

''(A) Not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996], the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

''(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

''(ii) the Administrator approves in writing the retention of the certification requirement.

''(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

''(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

''(II) the head of the executive agency approves in writing the retention of such certification requirement.

''(ii) For purposes of clause (i), the term 'head of the executive agency' with respect to a military department means the Secretary of Defense.''

ADDRESSING TAX DELINQUENCY BY GOVERNMENT CONTRACTORS

Memorandum of President of the United States, Jan. 20, 2010, 75 F.R. 3979, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than $5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to direct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Ac-

quisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors' certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treasury and other agency heads, to evaluate practices of contracting officers and debarring officials in response to contractors' certifications of serious tax delinquencies and to provide me, within 90 days, recommendations on process improvements to ensure these contractors are not awarded new contracts, including a plan to make contractor certifications available in a Government-wide database, as is already being done with other information on contractors.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

§ 1311. Establishment and membership

(a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisition Officers Council.

(b) MEMBERSHIP.—The members of the Council are—

(1) the Deputy Director for Management of the Office of Management and Budget;

(2) the Administrator;

(3) the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(4) the chief acquisition officer of each executive agency that is required to have a chief acquisition officer under section 1702 of this title and the senior procurement executive of each military department; and

(5) any other senior agency officer of each executive agency, appointed by the head of the agency in consultation with the Chairman of the Council, who can effectively assist the Council in performing the functions set forth in section 1312(b) of this title and supporting the associated range of acquisition activities.

(c) LEADERSHIP AND SUPPORT.—

(1) CHAIRMAN.—The Deputy Director for Management of the Office of Management and Budget is the Chairman of the Council.

(2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be selected by the Council from among its members. The Vice Chairman serves for one year and may serve multiple terms.

(3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the Council on behalf of the Deputy Director for Management.

(4) SUPPORT.—The Administrator of General Services shall provide administrative and other support for the Council.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3694.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1311(a)	41:414b(a).	Pub. L. 93–400, § 16A(a)–(c), as added Pub. L. 108–136, title XIV, § 1422(a), Nov. 24, 2003, 117 Stat. 1668.
1311(b)	41:414b(b)(1) (words before comma), (2)–(5).	
1311(c)(1)	41:414b(b)(1) (words after comma).	
1311(c)(2)	41:414b(c)(2).	
1311(c)(3)	41:414b(c)(1).	
1311(c)(4)	41:414b(c)(3).	

§ 1312. Functions

(a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the principal interagency forum for monitoring and improving the Federal acquisition system.

(b) FUNCTIONS.—The Council shall perform functions that include the following:

(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.

(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.

(5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.

(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.

(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3694.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1312(a)	41:414b(d).	Pub. L. 93–400, § 16A(d), (e), as added Pub. L. 108–136, title XIV, § 1422(a), Nov. 24, 2003, 117 Stat. 1668.
1312(b)	41:414b(e).	

CHAPTER 15—COST ACCOUNTING STANDARDS

Sec.
1501. Cost Accounting Standards Board.
1502. Cost accounting standards.
1503. Contract price adjustment.
1504. Effect on other standards and regulations.
1505. Examinations.
1506. Authorization of appropriations.

§ 1501. Cost Accounting Standards Board

(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(b) MEMBERSHIP.—

(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

(A) 2 representatives of the Federal Government—

(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and

(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.

(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—

(i) one of whom is a representative of industry; and

(ii) one of whom is particularly knowledgeable about cost accounting problems and systems.

(2) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING AGENCY.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(c) SENIOR STAFF.—The Administrator, after consultation with the Board, may—

(1) appoint an executive secretary and 2 additional staff members without regard to the provisions of title 5 governing appointments in the competitive service; and

(2) pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.

(d) OTHER STAFF.—The Administrator may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(e) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the Administrator, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(f) COMPENSATION.—

(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (e)(1), shall not receive additional compensation for services but shall continue to be compensated by the employing department or agency of the officer or employee.

(2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board.

(3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual hired under subsection (e)(2) may receive compensation at a rate fixed by the Administrator, but not to exceed the daily equivalent of the rate for level V of the Executive Schedule for each day (including travel time) in which the individual is properly engaged in the actual performance of duties under this chapter.

(4) TRAVEL EXPENSES.—While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis under this chapter shall be allowed travel expenses in accordance with section 5703 of title 5.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3695.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1501(a)	41:422(a)(1) (1st sentence).	Pub. L. 93–400, § 26(a)–(e), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4058.
1501(b)	41:422(a)(1) (last sentence), (2).	
1501(c)	41:422(b).	
1501(d)	41:422(c).	
1501(e)	41:422(d).	
1501(f)	41:422(e).	

In subsection (b)(2), the text of 41:422(a)(2)(C) is omitted as obsolete.

In subsection (b)(2)(A), the last sentence is substituted for ''of the initial members, two shall be appointed for terms of two years, one shall be appointed for a term of three years, and one shall be appointed for a term of four years'' because the initial members have already been appointed.

In subsection (c)(2), the reference to section 5376 of title 5 is substituted for the reference to grade GS–18 of the General Schedule because of section 529 [title I, § 101(c)(1)] of the Treasury, Postal Service, and General Government Appropriations Act, 1991 (Public Law 101–509, 104 Stat. 1442, 5:5376 note).

In subsection (f)(1), the words ''Except as otherwise provided in subsection (a) of this section'' are omitted because 41:422(a) does not provide any relevant exception.

In subsection (f)(2), the words ''private sector'' are substituted for ''private life'' for consistency with subsection (b)(1)(B) of the revised section.

In subsection (f)(3), the words ''Executive Schedule'' are substituted for ''Federal Executive Salary Schedule

under section 5316 of title 5'' for consistency and to eliminate unnecessary words.

SENATE REVISION AMENDMENT

In subsec. (c)(2), ''for level IV of the Executive Schedule'' substituted for ''under section 5376 of title 5'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

§ 1502. Cost accounting standards

(a) AUTHORITY.—

(1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter. The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONTRACT.—

(A) DEFINITION.—In this paragraph, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is adjusted in accordance with applicable requirements of law.

(C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial item;

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;

(iii) a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or

(iv) a contract or subcontract with a value of less than $7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than $7,500,000 that is covered by the standards.

(2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than $15,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.—The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3)(A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit

comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—

(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3696.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1502(a)	41:422(f)(1), (3).	Pub. L. 93–400, § 26(f), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4060; Pub. L. 103–355, title II, § 2453, title VIII, § 8301(d), Oct. 13, 1994, 108 Stat. 3326, 3397; Pub. L. 104–106, title XLII, § 4205, title XLIII, § 4321(h)(4), Feb. 10, 1996, 110 Stat. 656, 675; Pub. L 106–65, title VIII, § 802(a), (b), Oct. 5, 1999, 113 Stat. 701; Pub. L 109–163, div. A, title VIII, § 822, Jan. 6, 2006, 119 Stat. 3386.
1502(b)(1)	41:422(f)(2), (4).	
1502(b)(2)	41:422(f)(4).	
1502(b)(3)	41:422(f)(5).	
1502(c)	41:422(g)(1).	Pub. L. 93–400, § 26(g), (h)(1), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4061.
1502(d)	41:422(g)(2) (1st, 2d sentences).	
1502(e)	41:422(g)(2) (last sentence).	
1502(f)	41:422(h)(1).	
1502(g)	41:422(g)(3).	

In subsection (a)(1), the word ''make'' is omitted as being included in ''prescribe''.

In subsection (b)(2)(A), the word ''categories'' is omitted as being included in ''classes''.

In subsection (b)(3)(A)(ii), the words ''as in effect on or after the effective date of this paragraph'' are omitted as obsolete.

EFFECTIVE DATE OF AMENDMENT BY PUB. L. 106–65; REGULATIONS; IMPLEMENTATION; CONSTRUCTION

Pub. L. 106–65, div. A, title VIII, § 802(c)–(e), (g)–(i), Oct. 5, 1999, 113 Stat. 701, 702, provided that:

''(c) REGULATION ON TYPES OF CAS COVERAGE.—(1) The Administrator for Federal Procurement Policy shall revise the rules and procedures prescribed pursuant to section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)] to the extent necessary to increase the thresholds established in section 9903.201–2 of title 48 of the Code of Federal Regulations from $25,000,000 to $50,000,000.

''(2) Paragraph (1) requires only a change of the statement of a threshold condition in the regulation referred to by section number in that paragraph, and shall not be construed as—

''(A) a ratification or expression of approval of—

''(i) any aspect of the regulation; or

''(ii) the manner in which section 26 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1501 et seq.] is administered through the regulation; or

''(B) a requirement to apply the regulation.

''(d) IMPLEMENTATION.—The Administrator for Federal Procurement Policy shall ensure that this section [see Tables for classification] and the amendments made by this section are implemented in a manner that ensures that the Federal Government can recover costs, as appropriate, in a case in which noncompliance with cost accounting standards, or a change in the cost accounting system of a contractor segment or subcontractor segment that is not determined to be desirable by the Federal Government, results in a shift of costs from contracts that are not covered by the cost accounting standards to contracts that are covered by the cost accounting standards.

''(e) IMPLEMENTATION OF REQUIREMENTS FOR REVISION OF REGULATIONS.—(1) Final regulations required by subsection (c) shall be issued not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].

''(2) Subsection (c) shall cease to be effective one year after the date on which final regulations issued in accordance with that subsection take effect.

''(g) INAPPLICABILITY OF STANDARDS TO CERTAIN CONTRACTS.—The cost accounting standards issued pursu-

ant to section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], as amended by this section, shall not apply during fiscal year 2000 with respect to a contract entered into under the authority provided in chapter 89 of title 5, United States Code (relating to health benefits for Federal employees).

''(h) CONSTRUCTION REGARDING CERTAIN NOT-FOR-PROFIT ENTITIES.—The amendments made by subsections (a) and (b) [see Tables for classification] shall not be construed as modifying or superseding, nor as intended to impair or restrict, the applicability of the cost accounting standards described in section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)] to—

''(1) any educational institution or federally funded research and development center that is associated with an educational institution in accordance with Office of Management and Budget Circular A–21, as in effect on January 1, 1999; or

''(2) any contract with a nonprofit entity that provides research and development and related products or services to the Department of Defense.

''(i) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) [see Tables for classification] shall take effect 180 days after the date of enactment of this Act [Oct. 5, 1999], and shall apply with respect to—

''(1) contracts that are entered into on or after such effective date; and

''(2) determinations made on or after such effective date regarding whether a segment of a contractor or subcontractor is subject to the cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], regardless of whether the contracts on which such determinations are made were entered into before, on, or after such date.''

§ 1503. Contract price adjustment

(a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under chapter 71 of this title.

(b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under section 1502(f)(2) of this title shall be made, where applicable, on relevant contracts between the Federal Government and the contractor that are subject to the cost accounting standards so as to protect the Federal Government from payment, in the aggregate, of increased costs, as defined by the Cost Accounting Standards Board. The Federal Government may not recover costs greater than the aggregate increased cost to the Federal Government, as defined by the Board, on the relevant contracts subject to the price adjustment unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Federal Government.

(c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased costs were made to the contractor or subcontractor to the time the Federal Government receives full compensation for the price adjustment.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3699.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1503(a)	41:422(h)(2).	Pub. L. 93–400, § 26(h)(2)–(4), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4062.
1503(b)	41:422(h)(3).	
1503(c)	41:422(h)(4).	

§ 1504. Effect on other standards and regulations

(a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations prescribed by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)—[1]

(1) remain in effect until amended, superseded, or rescinded by the Board under this chapter; and

(2) are subject to the provisions of this division in the same manner as if prescribed by the Board under this division.

(b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation or proposed regulation of an executive agency is not inconsistent with a cost accounting standard prescribed or amended under this chapter, the Administrator, under the authority in sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, shall rescind or deny the promulgation of the inconsistent regulation or proposed regulation and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305.

(c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are the subject of cost accounting standards prescribed under this chapter are not subject to regulations established by another executive agency that differ from those standards with respect to the measurement, assignment, and allocation of those costs.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3699.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1504(a)	41:422(j)(1), (2).	Pub. L. 93–400, § 26(j), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4062.
1504(b)	41:422(j)(3).	
1504(c)	41:422(j)(4).	

REFERENCES IN TEXT

Section 719 of the Defense Production Act of 1950, referred to in subsec. (a), is section 719 of act Sept. 8, 1950, ch. 932, title VII, as added Pub. L. 91–379, title I, § 103, Aug. 15, 1970, 84 Stat. 796, which was classified to section 2168 of the former Appendix to Title 50, War and National Defense, prior to repeal by Pub. L. 100–679, § 5(b), Nov. 17, 1988, 102 Stat. 4063.

§ 1505. Examinations

To determine whether a contractor or subcontractor has complied with cost accounting standards prescribed under this chapter and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, an authorized representative of the head of the

[1] See References in Text note below.

agency concerned, of the offices of inspector general established under the Inspector General Act of 1978 (5 U.S.C. App.), or of the Comptroller General shall have the right to examine and copy documents, papers, or records of the contractor or subcontractor relating to compliance with the standards.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3700.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1505	41:422(k).	Pub. L. 93–400, § 26(k), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4062.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1506. Authorization of appropriations

Necessary amounts may be appropriated to carry out this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3700.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1506	41:422(*l*).	Pub. L. 93–400, § 26(*l*), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4063.

CHAPTER 17—AGENCY RESPONSIBILITIES AND PROCEDURES

Sec.
1701. Cooperation with the Administrator.
1702. Chief Acquisition Officers and senior procurement executives.
1703. Acquisition workforce.
1704. Planning and policy-making for acquisition workforce.
1705. Advocates for competition.
1706. Personnel evaluation.
1707. Publication of proposed regulations.
1708. Procurement notice.
1709. Contracting functions performed by Federal personnel.
1710. Public-private competition required before conversion to contractor performance.
1711. Value engineering.
1712. Record requirements.
1713. Procurement data.

§ 1701. Cooperation with the Administrator

On the request of the Administrator, each executive agency shall—

(1) make its services, personnel, and facilities available to the Office of Federal Procurement Policy to the greatest practicable extent for the performance of functions under this division; and

(2) except when prohibited by law, furnish to the Administrator, and give the Administrator access to, all information and records in its possession that the Administrator may determine to be necessary for the performance of the functions of the Office.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3700.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1701	41:406.	Pub. L. 93–400, § 7, Aug. 30, 1974, 88 Stat. 798.

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.

1–204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

1–3. AGENCY RESPONSIBILITIES

1–301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1–302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1–303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.

JIMMY CARTER.

EX. ORD. NO. 12931. FEDERAL PROCUREMENT REFORM

Ex. Ord. No. 12931, Oct. 13, 1994, 59 F.R. 52387, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement, it is hereby ordered as follows:

SECTION 1. To make procurement more effective in support of mission accomplishment and consistent with recommendations of the National Performance Review,

heads of executive agencies engaged in the procurement of supplies and services shall:

(a) Review agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures over and above those required by statute, and, where practicable, replace them with guiding principles that encourage and reward innovation;

(b) Review existing and planned agency programs to assure that such programs meet agency mission needs;

(c) Ensure that procurement organizations focus on measurable results and on increased attention to understanding and meeting customer needs;

(d) Increase the use of commercially available items where practicable, place more emphasis on past contractor performance, and promote best value rather than simply low cost in selecting sources for supplies and services;

(e) Ensure that simplified acquisition procedures are used, to the maximum extent practicable, for procurements under the simplified acquisition threshold in order to reduce administrative burdens and more effectively support the accomplishment of agency missions;

(f) Expand the use of the Government purchase card by the agency and take maximum advantage of the micro-purchase authority provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Short Title of 1994 Act note set out under section 101 of this title] by delegating the authority, to the maximum extent practicable, to the offices that will be using the supplies or services to be purchased;

(g) Establish clear lines of contracting authority and accountability;

(h) Establish career education programs for procurement professionals, including requirements for successful completion of educational requirements or mandatory training for entry level positions and for promotion to higher level positions, in order to ensure a highly qualified procurement work force;

(i) Designate a Procurement Executive with agency-wide responsibility to oversee development of procurement goals, guidelines, and innovation, measure and evaluate procurement office performance against stated goals, enhance career development of the procurement work force, and advise the agency heads whether goals are being achieved; and

(j) Review existing and planned information technology acquisitions and contracts to ensure that the agency receives the best value with regard to price and technology, and consider alternatives in cases where best value is not being obtained.

SEC. 2. The Director of the Office of Personnel Management, in consultation with the heads of executive agencies, shall ensure that personnel policies and classification standards meet the needs of executive agencies for a professional procurement work force.

SEC. 3. The Administrator of the Office of Federal Procurement Policy, after consultation with the Director of the Office of Management and Budget, shall work jointly with the heads of executive agencies to provide broad policy guidance and overall leadership necessary to achieve procurement reform, including, but not limited to:

(a) Coordinating Government-wide efforts;

(b) Assisting executive agencies in streamlining guidance for procurement processes;

(c) Identifying desirable Government-wide procurement system criteria; and

(d) Identifying major inconsistencies in law and policies relating to procurement that impose unnecessary burdens on the private sector and Federal procurement officials, and, following coordination with executive agencies, submitting necessary legislative initiatives to the Office of Management and Budget for the resolution of such inconsistencies.

SEC. 4. Executive Order No. 12352 is revoked.

WILLIAM J. CLINTON.

§ 1702. Chief Acquisition Officers and senior procurement executives

(a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or designated under section 901(a) of title 31 shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency.

(b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

(1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Officer is acquisition management.

(2) ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(3) OTHER FUNCTIONS.—The functions of each Chief Acquisition Officer include—

(A) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(B) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

(C) increasing appropriate use of performance-based contracting and performance specifications;

(D) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making within the executive agency;

(E) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;

(F) advising the executive agency on the applicability of relevant policy on the contracts of the agency for overseas contingency operations and ensuring the compliance of the contracts and contracting activities of the agency with such policy;

(G) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

(H) as part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections

1105(a)(28), 1115, 1116, and 9703 (added by section 5(a) of Public Law 103–62 (107 Stat. 289)) of title 31—

(i) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management;

(ii) developing strategies and specific plans for hiring, training, and professional development to rectify a deficiency in meeting those requirements; and

(iii) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

(c) SENIOR PROCUREMENT EXECUTIVE.—

(1) DESIGNATION.—The head of each executive agency shall designate a senior procurement executive.

(2) RESPONSIBILITY.—The senior procurement executive is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

(3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DESIGNATED.—For an executive agency for which a Chief Acquisition Officer has been appointed or designated under subsection (a), the head of the executive agency shall—

(A) designate the Chief Acquisition Officer as the senior procurement executive for the executive agency; or

(B) ensure that the senior procurement executive designated under paragraph (1) reports directly to the Chief Acquisition Officer without intervening authority.

(d) OVERSEAS CONTINGENCY OPERATIONS DEFINED.—In this section, the term ''overseas contingency operations'' means military operations outside the United States and its territories and possessions that are a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3701; Pub. L. 112–239, div. A, title VIII, § 849, Jan. 2, 2013, 126 Stat. 1853.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1702(a), (b)(1), (2).	41:414(a).	Pub. L. 93–400, § 16, as added Pub. L. 98–191, § 7, Dec. 1, 1983, 97 Stat. 1330; Pub. L. 98–369, title VII, § 2732(b)(2), July 18, 1984, 98 Stat. 1199; Pub. L. 108–136, div. A, title XIV, § 1421(a)(1), Nov. 24, 2003, 117 Stat. 1666.
1702(b)(3)	41:414(b).	
1702(c)	41:414(c).	

AMENDMENTS

2013—Subsec. (b)(3)(F) to (H). Pub. L. 112–239, § 849(a), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (d). Pub. L. 112–239, § 849(b), added subsec. (d).

§ 1703. Acquisition workforce

(a) DESCRIPTION.—For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A).

(b) APPLICABILITY.—

(1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—Except as provided in subsection (i), this section does not apply to an executive agency that is subject to chapter 87 of title 10.

(2) APPLICABILITY OF PROGRAMS.—The programs established by this section apply to the acquisition workforce of each executive agency.

(c) MANAGEMENT POLICIES.—

(1) DUTIES OF HEAD OF EXECUTIVE AGENCY.—

(A) ESTABLISH POLICIES AND PROCEDURES.—After consultation with the Administrator, the head of each executive agency shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5.

(B) ENSURE UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

(2) DUTIES OF ADMINISTRATOR.—

(A) IN GENERAL.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that the policies are consistent with the policies and procedures established, and enhanced system of incentives provided, pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 108 Stat. 3351). The Administrator shall evaluate the implementation of this section by executive agencies.

(B) GOVERNMENT-WIDE TRAINING STANDARDS AND CERTIFICATION.—The Administrator, acting through the Federal Acquisition Institute, shall provide and update government-wide training standards and certification requirements, including—

(i) developing and modifying acquisition certification programs;

(ii) ensuring quality assurance for agency implementation of government-wide training and certification standards;

(iii) analyzing the acquisition training curriculum to ascertain if all certification competencies are covered or if adjustments are necessary;

(iv) developing career path information for certified professionals to encourage retention in government positions;

(v) coordinating with the Office of Personnel Management for human capital efforts; and

(vi) managing rotation assignments to support opportunities to apply skills included in certification.

(d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXECUTIVE.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementing this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

(e) COLLECTING AND MAINTAINING INFORMATION.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementing this section. To the maximum extent practicable, information requirements shall conform to standards the Director of the Office of Personnel Management establishes for the Central Personnel Data File.

(f) CAREER DEVELOPMENT.—

(1) CAREER PATHS.—

(A) IDENTIFICATION.—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make available information on those career paths.

(B) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

(C) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency also shall encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

(2) PERFORMANCE INCENTIVES.—The head of each executive agency shall provide for an enhanced system of incentives to encourage excellence in the acquisition workforce that rewards performance of employees who contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

(A) relate pay to performance (including the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 3103(b) of this title); and

(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals.

(g) QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall—

(A) establish qualification requirements, including education requirements, for—

(i) entry-level positions in the General Schedule Contracting series (GS–1102);

(ii) senior positions in the General Schedule Contracting series (GS–1102);

(iii) all positions in the General Schedule Purchasing series (GS–1105); and

(iv) positions in other General Schedule series in which significant acquisition-related functions are performed; and

(B) prescribe the manner and extent to which the qualification requirements shall apply to an individual serving in a position described in subparagraph (A) at the time the requirements are established.

(2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE ACQUISITION WORKFORCE.—The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10 with appropriate modifications.

(3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. The Director is deemed to have approved the requirement or prescription if the Director does not disapprove the requirement or prescription within 30 days after receiving it.

(h) EDUCATION AND TRAINING.—

(1) FUNDING LEVELS.—The head of an executive agency shall set forth separately the funding levels requested for educating and training the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(2) TUITION ASSISTANCE.—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5 for personnel serving in acquisition positions in the agency.

(3) RESTRICTED OBLIGATION.—Amounts appropriated for education and training under this section may not be obligated for another purpose.

(i) TRAINING FUND.—

(1) PURPOSES.—The purposes of this subsection are to ensure that the Federal acquisition workforce—

(A) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

(B) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.

(2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an acquisition workforce training fund. The Administrator of General Services shall manage the fund through the Federal Acquisition Institute to support the activities set forth in section 1201(a) of this title, except as provided in paragraph (5). The Administrator of General Services shall consult with the Administrator in managing the fund.

(3) CREDITS TO FUND.—Five percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts shall be credited to the fund:

(A) Government-wide task and delivery-order contracts entered into under sections 4103 and 4105 of this title.

(B) Government-wide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multi-agency acquisition contracts for that technology authorized by section 11314 of title 40.

(C) multiple-award schedule contracts entered into by the Administrator of General Services.

(4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency that administers a contract described in paragraph (3) shall remit to the General Services Administration the amount required to be credited to the fund with respect to the contract at the end of each quarter of the fiscal year.

(5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT OF DEFENSE.—The Administrator of General Services shall transfer to the Secretary of Defense fees collected from the Department of Defense pursuant to paragraph (3). The Defense Acquisition University shall use the fees for acquisition workforce training.

(6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Administrator of General Services, through the Office of Federal Procurememt[1] Policy, shall ensure that amounts collected under this section are not used for a purpose other than the activities set forth in section 1201(a) of this title.

(7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDUCATION AND TRAINING.—Amounts credited to the fund are in addition to amounts requested and appropriated for education and training referred to in subsection (h)(1).

(8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund remain available to be expended only in the fiscal year for which they are credited and the 2 succeeding fiscal years.

(j) RECRUITMENT PROGRAM.—

(1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and 5753 of title 5, the head of a department or agency of the Federal Government (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in subsection (g)(1)(A)) are shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified individuals directly to those positions in the department or agency.

(2) TERMINATION OF AUTHORITY.—The head of a department or agency may not appoint an individual to a position of employment under this subsection after September 30, 2017.

(k) REEMPLOYMENT WITHOUT LOSS OF ANNUITY.—

(1) ESTABLISHMENT OF POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement and Disability Fund, on the basis of the individual's service, without discontinuing the annuity. The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

(2) CRITERIA FOR CONTINUATION OF ANNUITY.—Policies and procedures established under paragraph (1) shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if any of the following makes the reemployment of an individual essential:

(A) The unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of the individual's service.

(B) The exceptional difficulty in recruiting or retaining a qualified employee.

(C) A temporary emergency hiring need.

(3) SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual reemployed under this subsection shall not be deemed an employee for purposes of chapter 83 or 84 of title 5.

(4) REPORTING REQUIREMENT.—The Administrator shall submit annually to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.

(5) SUNSET PROVISION.—The authority under this subsection expires on December 31, 2011.

(*l*) ACQUISITION INTERNSHIP AND TRAINING PROGRAMS.—All Federal civilian agency acquisition internship or acquisition training programs shall follow guidelines provided by the Office of Federal Procurement Policy to ensure consistent training standards necessary to develop uniform core competencies throughout the Federal Government.

[1] So in original. Probably should be ''Procurement''.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3702; Pub. L. 112–74, div. C, title V, § 526, Dec. 23, 2011, 125 Stat. 914; Pub. L. 112–81, div. A, title VIII, § 864(c), (d), Dec. 31, 2011, 125 Stat. 1525; Pub. L. 112–239, div. A, title X, § 1076(a)(15), title XI, § 1103, Jan. 2, 2013, 126 Stat. 1948, 1973.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1703(a)	41:433(e) (last sentence).	Pub. L. 93–400, § 37(b)–(h)(2), as added Pub. L. 104–106, title XLIII, § 4307(a)(1), Feb. 10, 1996, 110 Stat. 666.
1703(b)(1)	41:433(a).	Pub. L. 93–400, § 37(a), as added Pub. L. 104–106, title XLIII, § 4307(a)(1), Feb. 10, 1996, 110 Stat. 666; Pub. L. 109–163, div. A, title VIII, § 821(b)(1), Jan. 6, 2006, 119 Stat. 3386.
1703(b)(2)	41:433(e) (1st sentence).	
1703(c)	41:433(b).	
1703(d)	41:433(c).	
1703(e)	41:433(d).	
1703(f)	41:433(f).	
1703(g)	41:433(g).	
1703(h)(1)	41:433(h)(1)(A).	
1703(h)(2)	41:433(h)(2).	
1703(h)(3)	41:433(h)(1)(B).	
1703(i)(1)	41:433 note.	Pub. L. 108–136, div. A, title XIV, § 1412(a), Nov. 24, 2003, 117 Stat. 1664.
1703(i)(2)–(8)	41:433(h)(3).	Pub. L. 93–400, § 37(h)(3), as added Pub. L. 108–136, div. A, title XIV, § 1412(b), Nov. 24, 2003, 117 Stat. 1664; Pub. L. 109–163, div. A, title VIII, § 821(a), Jan. 6, 2006, 119 Stat. 3386; Pub. L. 110–181, div. A, title VIII, § 854, Jan. 28, 2008, 122 Stat. 251.
1703(j)	41:433 note.	Pub. L. 108–136, div. A, title XIV, § 1413, Nov. 24, 2003, 117 Stat. 1665; Pub. L. 110–181, div. A, title VIII, § 853, title X, § 1063(g)(2), Jan. 28, 2008, 122 Stat. 250, 323.
1703(k)	41:433(i).	Pub. L. 93–400, § 37(i), as added Pub. L. 109–313, § 4, Oct. 6, 2006, 120 Stat. 1737.

In subsection (e), the word ''information'' the second time it appears is substituted for ''data'' for consistency in the subsection.

In subsection (i)(6), the words ''Office of Federal Procurement Policy'' are substituted for ''Office of Federal Acquisition Policy'' to provide the correct name of the office.

In subsection (j), the text of 1413(c) of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, 117 Stat. 1665) is omitted as obsolete.

In subsection (k)(4), the words ''Committee on Oversight and Government Reform'' are substituted for ''Committee on Government Reform'' on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

REFERENCES IN TEXT

Section 5051(c) of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (c)(2)(A), is section 5051(c) of Pub. L. 103–305, which is set out as a note under this section.

AMENDMENTS

2013—Subsec. (i)(6). Pub. L. 112–239, § 1076(a)(15), amended Pub. L. 112–81, § 864(d)(2). See 2011 Amendment note below.

Subsec. (j)(2). Pub. L. 112–239, § 1103, substituted ''September 30, 2017'' for ''September 30, 2012''.

2011—Subsec. (c)(2). Pub. L. 112–81, § 864(c)(1), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (i)(2). Pub. L. 112–81, § 864(d)(1), substituted ''to support the activities set forth in section 1201(a) of this title'' for ''to support the training of the acquisition workforce of the executive agencies''.

Subsec. (i)(6). Pub. L. 112–81, § 864(d)(2), as amended by Pub. L. 112–239, § 1076(a)(15), substituted ''ensure that amounts collected under this section are not used for a purpose other than the activities set forth in section 1201(a) of this title.'' for ''ensure that amounts collected under this subsection are not used for a purpose other than the purpose specified in subparagraphs (A) and (C) to (J) of section 1122(a)(5) of this title.''

Pub. L. 112–74 struck out ''for training'' after ''amounts collected'' and substituted ''subparagraphs (A) and (C) to (J) of section 1122(a)(5) of this title'' for ''paragraph (2)''.

Subsec. (*l*). Pub. L. 112–81, § 864(c)(2), added subsec. (*l*).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(15) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE COMMUNICATION BETWEEN GOVERNMENT AND INDUSTRY

Pub. L. 114–92, div. A, title VIII, § 887, Nov. 25, 2015, 129 Stat. 949, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Federal Acquisition Regulatory Council shall prescribe a regulation making clear that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms.''

TRAINING FOR CONTRACTING AND ENFORCEMENT PERSONNEL

Pub. L. 111–240, title I, § 1343(a), Sept. 27, 2010, 124 Stat. 2545, provided that: ''Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Federal Acquisition Institute, in consultation with the Administrator for Federal Procurement Policy, the Defense Acquisition University, and the Administrator [of the Small Business Administration], shall develop courses for acquisition personnel concerning proper classification of business concerns and small business size and status for purposes of Federal contracts, subcontracts, grants, cooperative agreements, and cooperative research and development agreements.''

DEFENSE ACQUISITION UNIVERSITY FUNDING

Pub. L. 109–163, div. A, title VIII, § 821(c), Jan. 6, 2006, 119 Stat. 3386, provided that: ''Amounts transferred under section 37(h)(3)(D) of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1703(i)(5)] (as amended by subsection (a)) for use by the Defense Acquisition University shall be in addition to other amounts authorized for the University.''

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Pub. L. 103–355, title V, § 5051(c), Oct. 13, 1994, 108 Stat. 3351, provided that: ''Within one year after the date of the enactment of this Act [Oct. 13, 1994], the Deputy Director for Management of the Office of Management and Budget, in consultation with appropriate officials in other departments and agencies of the Federal Government, shall, to the maximum extent consistent with applicable law—

''(1) establish policies and procedures for the heads of such departments and agencies to designate acquisition positions and manage employees (including the accession, education, training and career development of employees) in the designated acquisition positions; and

''(2) review the incentives and personnel actions available to the heads of departments and agencies of the Federal Government for encouraging excellence in the acquisition workforce of the Federal Government and provide an enhanced system of incentives

for the encouragement of excellence in such workforce which—

''(A) relates pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 313(b) of the Federal Property and Administrative Services Act of 1949, as added by subsection (a) [now 41 U.S.C. 3103(b)]); and

''(B) provides for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.''

§ 1704. Planning and policy-making for acquisition workforce

(a) DEFINITIONS.—In this section:

(1) ASSOCIATE ADMINISTRATOR.—The term ''Associate Administrator'' means the Associate Administrator for Acquisition Workforce Programs as designated by the Administrator pursuant to subsection (b).

(2) CHIEF ACQUISITION OFFICER.—The term ''Chief Acquisition Officer'' means a Chief Acquisition Officer for an executive agency appointed pursuant to section 1702 of this title.

(b) ASSOCIATE ADMINISTRATOR FOR ACQUISITION WORKFORCE PROGRAMS.—The Administrator shall designate a member of the Senior Executive Service as the Associate Administrator for Acquisition Workforce Programs. The Associate Administrator shall be chosen on the basis of demonstrated knowledge and expertise in acquisition, human capital, and management. The Associate Administrator shall be located in the Office of Federal Procurement Policy. The Associate Administrator shall be responsible for—

(1) supervising the acquisition workforce training fund established under section 1703(i) of this title;

(2) developing, in coordination with Chief Acquisition Officers and Chief Human Capital Officers, a strategic human capital plan for the acquisition workforce of the Federal Government;

(3) reviewing and providing input to individual agency acquisition workforce succession plans;

(4) recommending to the Administrator and other senior government officials appropriate programs, policies, and practices to increase the quantity and quality of the Federal acquisition workforce;

(5) implementing workforce programs under subsections (f) through (*l*) of section 1703 of this title; and

(6) carrying out other functions that the Administrator may assign.

(c) ACQUISITION AND CONTRACTING TRAINING PROGRAMS WITHIN EXECUTIVE AGENCIES.—

(1) CHIEF ACQUISITION OFFICER AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the Chief Acquisition Officer for that agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this subsection. The Chief Acquisition Officer shall ensure that the policies established by the head of the agency in accordance with this subsection are implemented throughout the agency.

(2) REQUIREMENT.—The head of each executive agency, after consultation with the Associate Administrator, shall establish and operate acquisition and contracting training programs. The programs shall—

(A) have curricula covering a broad range of acquisition and contracting disciplines corresponding to the specific acquisition and contracting needs of the agency involved;

(B) be developed and applied according to rigorous standards; and

(C) be designed to maximize efficiency, through the use of self-paced courses, online courses, on-the-job training, and the use of remote instructors, wherever those features can be applied without reducing the effectiveness of the training or negatively affecting academic standards.

(d) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote the development of performance standards for training and uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall evaluate the implementation of the provisions of subsection (c) by executive agencies.

(e) INFORMATION ON ACQUISITION AND CONTRACTING TRAINING.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition and contracting workforce related to the implementation of subsection (c).

(f) ACQUISITION WORKFORCE HUMAN CAPITAL SUCCESSION PLAN.—

(1) IN GENERAL.—Each Chief Acquisition Officer for an executive agency shall develop, in consultation with the Chief Human Capital Officer for the agency and the Associate Administrator, a succession plan consistent with the agency's strategic human capital plan for the recruitment, development, and retention of the agency's acquisition workforce, with a particular focus on warranted contracting officers and program managers of the agency.

(2) CONTENT OF PLAN.—The acquisition workforce succession plan shall address—

(A) recruitment goals for personnel from procurement intern programs;

(B) the agency's acquisition workforce training needs;

(C) actions to retain high performing acquisition professionals who possess critical relevant skills;

(D) recruitment goals for personnel from the Federal Career Intern Program; and

(E) recruitment goals for personnel from the Presidential Management Fellows Program.

(g) ACQUISITION WORKFORCE DEVELOPMENT STRATEGIC PLAN.—

(1) PURPOSE.—The purpose of this subsection is to authorize the preparation and completion of the Acquisition Workforce Development Strategic Plan, which is a plan for Federal

agencies other than the Department of Defense to—

(A) develop a specific and actionable 5-year plan to increase the size of the acquisition workforce; and

(B) operate a government-wide acquisition intern program for the Federal agencies.

(2) ESTABLISHMENT OF PLAN.—The Associate Administrator shall be responsible for the management, oversight, and administration of the Acquisition Workforce Development Strategic Plan in cooperation and consultation with the Office of Federal Procurement Policy and with the assistance of the Federal Acquisition Institute.

(3) CRITERIA.—The Acquisition Workforce Development Strategic Plan shall include an examination of the following matters:

(A) The variety and complexity of acquisitions conducted by each Federal agency covered by the plan, and the workforce needed to effectively carry out the acquisitions.

(B) The development of a sustainable funding model to support efforts to hire, retain, and train an acquisition workforce of appropriate size and skill to effectively carry out the acquisition programs of the Federal agencies covered by the plan, including an examination of interagency funding methods and a discussion of how the model of the Defense Acquisition Workforce Development Fund could be applied to civilian agencies.

(C) Any strategic human capital planning necessary to hire, retain, and train an acquisition workforce of appropriate size and skill at each Federal agency covered by the plan.

(D) Methodologies that Federal agencies covered by the plan can use to project future acquisition workforce personnel hiring requirements, including an appropriate distribution of such personnel across each category of positions designated as acquisition workforce personnel under section 1703(g) of this title.

(E) Government-wide training standards and certification requirements necessary to enhance the mobility and career opportunities of the Federal acquisition workforce within the Federal agencies covered by the plan.

(F) If the Associate Administrator recommends as part of the plan a growth in the acquisition workforce of the Federal agencies covered by the plan below 25 percent over the next 5 years, an examination of each of the matters specified in subparagraphs (A) to (E) in the context of a 5-year plan that increases the size of such acquisition workforce by not less than 25 percent, or an explanation why such a level of growth would not be in the best interest of the Federal Government.

(4) DEADLINE FOR COMPLETION.—The Acquisition Workforce Development Strategic Plan shall be completed not later than one year after October 14, 2008, and in a fashion that allows for immediate implementation of its recommendations and guidelines.

(5) FUNDS.—The acquisition workforce development strategic plan shall be funded from the acquisition workforce training fund under section 1703(i) of this title.

(h) TRAINING IN THE ACQUISITION OF ARCHITECT AND ENGINEERING SERVICES.—The Administrator shall ensure that a sufficient number of Federal employees are trained in the acquisition of architect and engineering services.

(i) UTILIZATION OF RECRUITMENT AND RETENTION AUTHORITIES.—The Administrator, in coordination with the Director of the Office of Personnel Management, shall encourage executive agencies to use existing authorities, including direct hire authority and tuition assistance programs, to recruit and retain acquisition personnel and consider recruiting acquisition personnel who may be retiring from the private sector, consistent with existing laws and regulations.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3706; Pub. L. 111–383, div. A, title X, § 1075(e)(15), Jan. 7, 2011, 124 Stat. 4375; Pub. L. 112–81, div. A, title VIII, § 864(a), Dec. 31, 2011, 125 Stat. 1522; Pub. L. 112–239, div. A, title X, § 1076(a)(14), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS NOT SHOWN IN TEXT

Subsec. (g) of this section was derived from Pub. L. 110–417, [div. A], title VIII, § 869, Oct. 14, 2008, 122 Stat. 4553, which was set out as a note under section 433a of former Title 41, Public Contracts, prior to being repealed and reenacted as subsec. (g) of this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 869 of Pub. L. 110–417 was amended by Pub. L. 111–383, div. A, title X, § 1075(e)(15), Jan. 7, 2011, 124 Stat. 4375. For applicability of that amendment to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 869 of Pub. L. 110–417 was amended as follows:

(1) in subsection (b), by striking ''433(a)'' and inserting ''433a(a)''; and

(2) in subsection (c)(4)—

(A) by striking ''37(j)'' and inserting ''37(g)''; and

(B) by striking ''433(j)'' and inserting ''433(g)''.

Such references did not appear in the text of subsec. (g) as enacted. See Historical and Revision Notes below.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1704(a)(1)	no source.	
1704(a)(2)	41:433a(h).	Pub. L. 110–181, div. A, title VIII, § 855, Jan. 28, 2008, 122 Stat. 251.
1704(b)–(f) ..	41:433a(a)–(e).	
1704(g)	41:433a note.	Pub. L. 110–417, [div. A], title VIII, § 869, Oct. 14, 2008, 122 Stat. 4553.
1704(h), (i) ..	41:433a(f), (g).	

In subsection (a), the definition of ''executive agency'' is omitted as unnecessary.

In subsection (f)(1), the words ''Not later than 1 year after the date of the enactment of this Act'' are omitted as obsolete.

In subsection (g)(2), the words ''Associate Administrator'' are substituted for ''Associate Administrator for Acquisition Workforce Programs designated under section 855(a) of the National Defense Authorization

Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 251; 41 U.S.C. 433(a))'' because of subsection (a)(1).

In subsection (g)(3)(D), the reference to ''section 37(j) of the Office of Federal Procurement Policy Act'' is changed to ''section 1703(g) of this title'' to correct an error in the law.

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239, § 1076(a)(14), made technical amendment to directory language of Pub. L. 112–81, § 864(a)(2). See 2011 Amendment note below.

2011—Subsec. (b). Pub. L. 112–81, § 864(a)(2), as amended by Pub. L. 112–239, § 1076(a)(14), substituted ''The Associate Administrator shall be located in the Office of Federal Procurement Policy.'' for ''The Associate Administrator shall be located in the Federal Acquisition Institute (or its successor).'' in introductory provisions.

Pub. L. 112–81, § 864(a)(1), inserted ''The Associate Administrator shall be chosen on the basis of demonstrated knowledge and expertise in acquisition, human capital, and management.'' after ''Programs.'' in introductory provisions.

Subsec. (b)(5), (6). Pub. L. 112–81, § 864(a)(3)–(5), added par. (5) and redesignated former par. (5) as (6).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(14) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EXPANSION OF TRAINING AND USE OF INFORMATION TECHNOLOGY CADRES

Pub. L. 113–291, div. A, title VIII, § 835, Dec. 19, 2014, 128 Stat. 3449, provided that:

''(a) PURPOSE.—The purpose of this section is to ensure timely progress by Federal agencies toward developing, strengthening, and deploying information technology acquisition cadres consisting of personnel with highly specialized skills in information technology acquisition, including program and project managers.

''(b) STRATEGIC PLANNING.—

''(1) IN GENERAL.—The Administrator for Federal Procurement Policy, in consultation with the Administrator for E-Government and Information Technology, shall work with Federal agencies, other than the Department of Defense, to update their acquisition human capital plans that were developed pursuant to the October 27, 2009, guidance issued by the Administrator for Federal Procurement Policy in furtherance of section 1704(g) of title 41, United States Code (originally enacted as section 869 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4553)), to address how the agencies are meeting their human capital requirements to support the timely and effective acquisition of information technology.

''(2) ELEMENTS.—The updates required by paragraph (1) shall be submitted to the Administrator for Federal Procurement Policy and shall address, at a minimum, each Federal agency's consideration or use of the following procedures:

''(A) Development of an information technology acquisition cadre within the agency or use of memoranda of understanding with other agencies that have such cadres or personnel with experience relevant to the agency's information technology acquisition needs.

''(B) Development of personnel assigned to information technology acquisitions, including cross-functional training of acquisition information technology and program personnel.

''(C) Use of the specialized career path for information technology program managers as designated by the Office of Personnel Management and plans for strengthening information technology program management.

''(D) Use of direct hire authority.

''(E) Conduct of peer reviews.

''(F) Piloting of innovative approaches to information technology acquisition workforce development, such as industry-government rotations.

''(c) FEDERAL AGENCY DEFINED.—In this section, the term 'Federal agency' means each agency listed in section 901(b) of title 31, United States Code.''

§ 1705. Advocates for competition

(a) ESTABLISHMENT AND DESIGNATION.—

(1) ESTABLISHMENT.—Each executive agency has an advocate for competition.

(2) DESIGNATION.—The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for the executive agency on July 18, 1984 (other than the senior procurement executive designated pursuant to section 1702(c) of this title) to serve as the advocate for competition;

(B) not assign those officers or employees duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide those officers or employees with the staff or assistance necessary to carry out the duties and responsibilities of the advocate for competition, such as individuals who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) DUTIES AND FUNCTIONS.—The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to, and promoting full and open competition in, the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency;

(4) prepare and transmit to the senior procurement executive an annual report describing—

(A) the advocate's activities under this section;

(B) new initiatives required to increase competition; and

(C) remaining barriers to full and open competition;

(5) recommend to the senior procurement executive—

(A) goals and the plans for increasing competition on a fiscal year basis; and

(B) a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, con-

tracting officers, and others in authority to promote competition in procurement programs; and

(6) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) RESPONSIBILITIES.—The advocate for competition for each procuring activity is responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to acquisition, including unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3709.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1705	41:418.	Pub. L. 93–400, § 20, as added Pub. L. 98–369, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197; Pub. L. 103–355, title VIII, § 8303(a), Oct. 13, 1994, 108 Stat. 3398.

§ 1706. Personnel evaluation

The head of each executive agency subject to division C shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98–577, 98 Stat. 3066), that the performance appraisal system applicable to those employees affords appropriate recognition to, among other factors, efforts to—

(1) increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;

(2) further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98–577, 98 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public Law 98–525, title XII, 98 Stat. 2588); and

(3) further other objectives and purposes of the Federal acquisition system authorized by law.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3710.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1706	41:414a.	Pub. L. 98–577, title V, § 502, Oct. 30, 1984, 98 Stat. 3085.

REFERENCES IN TEXT

The Small Business and Federal Procurement Competition Enhancement Act of 1984, referred to in text, is Pub. L. 98–577, Oct. 30, 1984, 98 Stat. 3066. For complete classification of this Act to the Code, see Short Title of 1984 Act note set out under section 101 of this title and Tables.

The Defense Procurement Reform Act of 1984, referred to in par. (2), is Pub. L. 98–525, title XII, Oct. 19, 1984, 98 Stat. 2588. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 2302 of Title 10, Armed Forces, and Tables.

§ 1707. Publication of proposed regulations

(a) COVERED POLICIES, REGULATIONS, PROCEDURES, AND FORMS.—

(1) REQUIRED COMMENT PERIOD.—Except as provided in subsection (d), a procurement policy, regulation, procedure, or form (including an amendment or modification thereto) may not take effect until 60 days after it is published for public comment in the Federal Register pursuant to subsection (b) if it—

(A) relates to the expenditure of appropriated funds; and

(B)(i) has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form; or

(ii) has a significant cost or administrative impact on contractors or offerors.

(2) EXCEPTION.—A policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but the effective date may not be less than 30 days after the publication date.

(b) PUBLICATION IN FEDERAL REGISTER AND COMMENT PERIOD.—Subject to subsection (c), the head of the agency shall have published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on the proposal. The length of the comment period may not be less than 30 days.

(c) CONTENTS OF NOTICE.—Notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and the name and address of the officer or employee of the Federal Government designated to receive the comments.

(d) WAIVER.—The requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable.

(e) EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.—

(1) TEMPORARY BASIS.—A procurement policy, regulation, procedure, or form for which the requirements of subsections (a) and (b) are waived under subsection (d) is effective on a temporary basis if—

(A) a notice of the policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

(2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under subsection (d) may issue the final procurement policy, regulation, procedure, or form.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3710.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1707	41:418b.	Pub. L. 93–400, § 22, as added Pub. L. 98–577, title III, § 302(a), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 103–355, title V, § 5092, Oct. 13, 1994, 108 Stat. 3362, as amended Pub. L. 104–106, title XLIII, § 4321(a)(9), Feb. 10, 1996, 110 Stat. 671.

In subsection (a)(2), the words ''Notwithstanding the preceding sentence'' are omitted as unnecessary.

§ 1708. Procurement notice

(a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—

(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, but not to exceed $25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);

(2) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or

(B) place an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement, or similar arrangement; and

(3) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order exceeding $25,000 under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) EXEMPTIONS.—

(1) IN GENERAL.—A notice is not required under subsection (a) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency's needs and disclosure would compromise national security;

(C) the proposed procurement would result from acceptance of—

(i) an unsolicited proposal that demonstrates a unique and innovative research concept and publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act (15 U.S.C. 638);

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) CERTAIN PROCUREMENTS.—The requirements of subsection (a)(2) do not apply to a procurement—

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10; or

(B) for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.—Paragraph (1)(A) shall be implemented in a manner consistent with applicable international agreements.

(c) CONTENTS OF NOTICE.—Each notice of solicitation required by paragraph (1) or (2) of subsection (a) shall include—

(1) an accurate description of the property or services to be contracted for, which description—

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A)(i) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and

(ii) identify the source in the Federal Government, if any, from which the technical data may be obtained; and

(B)(i) state whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and

(ii) if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of those procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial items using special simplified procedures—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.—A notice of solicitation, award, or order required to be published under subsection (a) shall be published by electronic means. The notice must be electronically accessible in a form that allows convenient and universal user access through the single Government-wide point of entry designated in the Federal Acquisition Regulation.

(e) TIME LIMITATIONS.—

(1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency required by subsection (a)(2) to publish a notice of solicitation may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)(2) that—

(i) in the case of a solicitation for research and development, is earlier than 45 days after the date the notice required for a bid or proposal for a contract described in subsection (a)(2)(A) is published;

(ii) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than 30 days after the date the notice required for an order described in subsection (a)(2)(B) is published; or

(iii) in any other case, is earlier than 30 days after the date the solicitation is issued.

(2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.—An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation for which a deadline is not provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (1) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial items.

(f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under subsection (a)(1) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.—An executive agency shall make available to a business concern, or the authorized representative of a concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of the package.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3711.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1708(a)	41:416(a)(1).	Pub. L. 93–400, § 18, as added Pub. L. 98–369, title VII, § 2732(a), July 18, 1984, 98 Stat. 1195; Pub. L. 98–577, title III, § 303(a), Oct. 30, 1984, 98 Stat. 3077; Pub. L. 99–500, § 101(c) [title X, § 922(b), (d)(2)], Oct. 18, 1986, 100 Stat. 1783–151, 1783–152; Pub. L. 99–591, § 101(c) [title X, § 922(b), (d)(2)], Oct. 30, 1986, 100 Stat. 3341–151, 3341–152; Pub. L. 99–661, title IX, formerly title IV, § 922(b), (d)(2), Nov. 14, 1986, 100 Stat. 3931, 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, title VIII, § 806(d), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103–355, title I, § 1055(b)(1), title IV, §§ 4201(b), (c), 4202(a)–(c), title VIII, § 8302, title IX, § 9001(b), Oct. 13, 1994, 108 Stat. 3265, 3344, 3398, 3402; Pub. L. 104–106, title XLI, § 4101(c), title XLII, § 4202(d), title XLIII, §§ 4310, 4321(h)(3), Feb. 10, 1996, 110 Stat. 642, 654, 670, 675; Pub. L. 105–85, title VIII, § 850(e)(2), Nov. 18, 1997, 111 Stat. 1849; Pub. L. 105–261, title X, § 1069(d)(1), Oct. 17, 1998, 112 Stat. 2136; Pub. L. 106–398, § 1 [[div. A], title VIII, § 810(a), (b)], Oct. 30, 2000, 114 Stat. 1654A–209; Pub. L 107–296, title VIII, § 833(c)(2), Nov. 25, 2002, 116 Stat. 2226.
1708(b)(1), (2).	41:416(c).	
1708(b)(3)	no source.	
1708(c)	41:416(b).	
1708(d)	41:416(a)(2), (7).	
1708(e)	41:416(a)(3), (5), (6).	
1708(f)	41:416(a)(4).	
1708(g)	41:416(d).	

In subsection (a)(3), the words ''under a basic agreement, basic ordering agreement, or similar arrangement'' are substituted for ''referred to in clause (A)(ii)'' for clarity. The words ''by the Secretary of Commerce'' are omitted as obsolete. The Secretary of Commerce no longer has responsibility for publishing notices of awards or orders. See revision note for subsection (d).

In subsection (b)(2), the text of 41 U.S.C. 416(C)(1)(H) is omitted because the procurement authority of the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002 (6 U.S.C. 339(c)) expired on September 30, 2007.

Subsection (b)(3) is added because of section 850(e)(3) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85, 111 Stat. 1849, 15:637 note), which in part provided that the amendments made by section 850(e)(2), which amended 41:416(c)(1), be implemented in a manner consistent with applicable international agreements.

Subsection (d) is substituted for 41:416(a)(2) and (7) to eliminate unnecessary words. Federal Business Opportunities is the designated single point of universal electronic public access for publication of all procurement information and notices previously published by the Secretary of Commerce in the Commerce Business Daily. See 66 Fed. Reg. 27407, May 16, 2001, 68 Fed. Reg. 56678, October 1, 2003, 48 CFR ch. 1, subch. B, part 5, and the special notice posted in CBDNet on December 28, 2001, and printed on January 2, 2002.

In subsection (e)(1)(B)(i), the words ''required for a bid or proposal for a contract described in'' are substituted for ''required by'' for clarity.

In subsection (e)(1)(B)(ii), the words ''required for an order described in'' are substituted for ''required by'' for clarity.

APPLICABILITY TO TENNESSEE VALLEY AUTHORITY

Pub. L. 98–577, title III, § 303(c), Oct. 30, 1984, 98 Stat. 3079, provided that: ''The provisions of the amendments made by subsection (a) of this section [see Tables for classification] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.''

§ 1709. Contracting functions performed by Federal personnel

(a) COVERED PERSONNEL.—Personnel referred to in subsection (b) are—

(1) an employee, as defined in section 2105 of title 5;

(2) a member of the armed forces; and

(3) an individual assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

(b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—No individual who is not an individual described in subsection (a) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (a) with adequate training and capabilities to perform the evaluations and analyses are not readily available in the agency or another Federal agency. When administering this subsection, the head of each executive agency shall determine in accordance with standards and procedures prescribed in the Federal Acquisition Regulation whether—

(1) a sufficient number of personnel described in subsection (a) in the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and

(2) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

(c) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not affect the relationship between the Federal Government and a Federally funded research and development center.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3714.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1709(a)	41:419(b).	Pub. L. 93–400, § 23, as added Pub. L. 103–355, title VI, § 6002(a), Oct. 13, 1994, 108 Stat. 3363.
1709(b)	41:419(a).	
1709(c)	41:419(c).	

In subsection (a), before paragraph (1), the words ''Personnel referred to in subsection (b) are'' are substituted for ''For purposes of subsection (a) of this section, the personnel described in this subsection are as follows'' to eliminate unnecessary words. In paragraph (3), the words ''employee from State or local governments'' are substituted for ''person'' for clarity.

SENATE REVISION AMENDMENT

In subsec. (a)(3), ''individual'' substituted for ''employee from State or local governments'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

REQUIREMENT FOR GUIDANCE AND REGULATIONS

Pub. L. 103–355, title VI, § 6002(b), Oct. 13, 1994, 108 Stat. 3363, provided that: ''The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall—

''(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

''(2) provide guidance and promulgate regulations regarding—

''(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

''(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.''

§ 1710. Public-private competition required before conversion to contractor performance

(a) PUBLIC-PRIVATE COMPETITION.—

(1) WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS ALLOWED.—A function of an executive agency performed by 10 or more agency civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by agency civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the executive agency with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by agency civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Federal Government over the life of the contract, including—

(i) the estimated cost to the Federal Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Federal Government for performance of the function by agency civilian employees; and

(iii) an estimate of all other costs and expenditures that the Federal Government would incur because of the award of the contract;

(F) requires continued performance of the function by agency civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by agency civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) $10,000,000; and

(G) examines the effect of performance of the function by a contractor on the agency mission associated with the performance of the function.

(2) NOT A NEW REQUIREMENT.—A function that is performed by the executive agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) PROHIBITIONS.—In no case may a function being performed by executive agency personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(b) CONSULTING WITH AFFECTED EMPLOYEES OR THEIR REPRESENTATIVES.—

(1) CONSULTING WITH AFFECTED EMPLOYEES.—Each civilian employee of an executive agency responsible for determining under Office of Management and Budget Circular A76 whether to convert to contractor performance any function of the executive agency—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of the employees on the development and preparation of that statement and that study; and

(B) may consult with the employees on other matters relating to that determination.

(2) CONSULTING WITH REPRESENTATIVES.—

(A) EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) EMPLOYEES NOT REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) REGULATIONS.—The head of each executive agency shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—

(1) REPORT.—Before commencing a public-private competition under subsection (a), the head of an executive agency shall submit to Congress a report containing the following:

(A) The function for which the public-private competition is to be conducted.

(B) The location at which the function is performed by agency civilian employees.

(C) The number of agency civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of an executive agency to impose predetermined constraints or limitations on agency civilian employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) EXAMINATION OF POTENTIAL ECONOMIC EFFECT.—The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) agency civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Federal Government, if more than 50 agency civilian employees perform the function.

(3) OBJECTIONS TO PUBLIC-PRIVATE COMPETITION.—

(A) GROUNDS.—A representative individual or entity at a facility where a public-private competition is conducted may submit to the head of the executive agency an objection to the public-private competition on the grounds that—

(i) the report required by paragraph (1) has not been submitted; or

(ii) the certification required by paragraph (1)(E) was not included in the report required by paragraph (1).

(B) DEADLINES.—The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(C) REPORT AND CERTIFICATION REQUIRED BEFORE SOLICITATION OR AWARD OF CONTRACT.—If the head of the executive agency determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY DISABLED PEOPLE.—This section shall not apply to a commercial or industrial type function of an executive agency that is—

(1) included on the procurement list established pursuant to section 8503 of this title; or

(2) planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled people in accordance with chapter 85 of this title.

(e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3715.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1710	41:439.	Pub. L. 93–400, § 43, as added Pub. L. 110–181, title III, § 327(a), Jan. 28, 2008, 122 Stat. 63.

In the heading for subsection (d) and in subsection (d)(2), the words ''disabled people'' are substituted for ''handicapped persons'' for consistency with chapter 85 of the revised title.

§ 1711. Value engineering

Each executive agency shall establish and maintain cost-effective procedures and processes for analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of the agency. The analysis shall be—

(1) performed by qualified agency or contractor personnel; and

(2) directed at improving performance, reliability, quality, safety, and life cycle costs.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3718.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1711	41:432.	Pub. L. 93–400, § 36, as added Pub. L. 104–106, title XLIII, § 4306(a), Feb. 10, 1996, 110 Stat. 665.

§ 1712. Record requirements

(a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall establish and maintain for 5 years a computer file, by fiscal year, containing unclassified records of all procurements greater than the simplified acquisition threshold in that fiscal year.

(b) CONTENTS.—The record established under subsection (a) shall include, with respect to each procurement carried out using—

(1) competitive procedures—

(A) the date of contract award;

(B) information identifying the source to whom the contract was awarded;

(C) the property or services the Federal Government obtains under the procurement; and

(D) the total cost of the procurement; or

(2) procedures other than competitive procedures—

(A) the information described in paragraph (1);

(B) the reason under section 3304(a) of this title or section 2304(c) of title 10 for using the procedures; and

(C) the identity of the organization or activity that conducted the procurement.

(c) SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN ONE BID OR PROPOSAL.—Information included in a record pursuant to subsection (b)(1) that relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in the record. The record of that information shall be designated ''noncompetitive procurements using competitive procedures''.

(d) TRANSMISSION AND DATA ENTRY OF INFORMATION.—The head of each executive agency shall—

(1) ensure the accuracy of the information included in the record established and maintained by the agency under subsection (a); and

(2) transmit in a timely manner such information to the General Services Administration for entry into the Federal Procurement Data System referred to in section 1122(a)(4) of this title, or any successor system.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3718.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1712	41:417.	Pub. L. 93–400, § 19, as added Pub. L. 98–369, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197; Pub. L. 103–355, title IV, § 4403, Oct. 13, 1994, 108 Stat. 3349; Pub. L. 110–417, title VIII, § 874(b), Oct. 14, 2008, 122 Stat. 4558.

§ 1713. Procurement data

(a) DEFINITIONS.—In this section:

(1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term ''qualified HUBZone small business concern'' has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(p)).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term ''small business concern owned and controlled by women'' has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of the Women's Business Ownership Act of 1988 (Public Law 100–533, 102 Stat. 2692).

(b) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of qualified HUBZone small business concerns, the number of small businesses owned and controlled by women, and the number of small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, that are first time recipients of contracts from the agency. The Office shall take appropriate action to ascertain, for each fiscal year, the number of those small businesses that have newly entered the Federal market.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3719.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1713(a)	41:417a(b).	Pub. L. 100–533, title V, § 502, Oct. 25, 1988, 102 Stat. 2697; Pub. L. 105–135, title VI, § 604(f)(2), Dec. 2, 1997, 111 Stat. 2634.
1713(b)	41:417a(a).	

In subsection (b), the words ''socially and economically disadvantaged individuals'' are substituted for ''socially and economically disadvantaged businesses'' for consistency with the term set out in subsection (a).

REFERENCES IN TEXT

Section 204 of the Women's Business Ownership Act of 1988, referred to in subsec. (a)(3), is section 204 of Pub. L. 100–533, which is set out as a note under section 637 of Title 15, Commerce and Trade.

CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1901. Simplified acquisition procedures.
1902. Procedures applicable to purchases below micro-purchase threshold.
1903. Special emergency procurement authority.
1904. Certain transactions for defense against attack.
1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold.
1906. List of laws inapplicable to procurements of commercial items.
1907. List of laws inapplicable to procurements of commercially available off-the-shelf items.
1908. Inflation adjustment of acquisition-related dollar thresholds.
1909. Management of purchase cards.

AMENDMENTS

2012—Pub. L. 112–194, § 2(a)(2), Oct. 5, 2012, 126 Stat. 1447, added item 1909.

§ 1901. Simplified acquisition procedures

(a) WHEN PROCEDURES ARE TO BE USED.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than $5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(b) PROHIBITION ON DIVIDING PURCHASES.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified acquisition procedures required by subsection (a).

(c) PROMOTION OF COMPETITION REQUIRED.—When using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) CONSIDERATION OF OFFERS TIMELY RECEIVED.—The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) SPECIAL RULES FOR COMMERCIAL ITEMS.—The Federal Acquisition Regulation shall provide that an executive agency using special simplified procedures to purchase commercial items—

(1) shall publish a notice in accordance with section 1708 of this title and, as provided in section 1708(c)(4) of this title, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 2304(f) of title 10 or section 3304(e) of this title, as applicable; and

(3) shall include in the contract file a written description of the procedures used in

awarding the contract and the number of offers received.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3719.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1901	41:427.	Pub. L. 93–400, § 31, as added Pub. L. 103–355, title IV, § 4201(a), Oct. 13, 1994, 108 Stat. 3342; Pub. L. 104–106, title XLII, § 4202(c), title XLIII, § 4302(b), Feb. 10, 1996, 110 Stat. 653, 658, as amended Pub. L. 104–201, title X, § 1074(b)(6) (less effective date), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105–85, title VIII, § 850(d), Nov. 18, 1997, 111 Stat. 1848.

Section 31(e) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(e)) is omitted as obsolete.

In subsection (e)(2), the reference to section 253 of this title is limited to section 3303(e) of the revised title for clarity.

§ 1902. Procedures applicable to purchases below micro-purchase threshold

(a) DEFINITION.—For purposes of this section, the micro-purchase threshold is $3,000.

(b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICABILITY OF CERTAIN AUTHORITY.—

(1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each executive agency shall ensure that procuring activities of that agency, when awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note).

(2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to a purchase with a price exceeding the micro-purchase threshold.

(c) NONAPPLICABILITY OF CERTAIN PROVISIONS.—An executive agency purchase with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and chapter 83 of this title.

(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not greater than $3,000 may be made without obtaining competitive quotations if an employee of an executive agency or a member of the armed forces, authorized to do so, determines that the price for the purchase is reasonable.

(e) EQUITABLE DISTRIBUTION.—Purchases not greater than $3,000 shall be distributed equitably among qualified suppliers.

(f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.—This section shall be implemented through the Federal Acquisition Regulation.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3720.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1902	41:428.	Pub. L. 93–400, § 32, as added Pub. L. 103–355, title IV, § 4301(a), Oct. 13, 1994, 108 Stat. 3346; Pub. L. 104–106, title XLIII, §§ 4304(b)(4), (c)(3), 4311, Feb. 10, 1996, 110 Stat. 664, 671.

SENATE REVISION AMENDMENT

In subsecs. (a), (d), and (e), ''$3,000'' substituted for ''$2,500'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

MICRO-PURCHASE GUIDELINES

Pub. L. 111–240, title I, § 1332, Sept. 27, 2010, 124 Stat. 2541, provided that: ''Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Director of the Office of Management and Budget, in coordination with the Administrator of General Services, shall issue guidelines regarding the analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small business concerns in purchases in an amount not in excess of the micro-purchase threshold, as defined in section 32 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 428) [now 41 U.S.C. 1902] (in this section referred to as 'micro-purchases'), consistent with the national policy on small business participation in Federal procurements set forth in sections 2(a) and 15(g) of the Small Business Act (15 U.S.C. 631(a) and 644(g)), and dissemination of best practices for participation of small business concerns in micro-purchases.''

[For definition of ''small business concern'' as used in section 1332 of Pub. L. 111–240, set out above, see section 1001 of Pub. L. 111–240, set out as a note under section 632 of Title 15, Commerce and Trade.]

§ 1903. Special emergency procurement authority

(a) APPLICABILITY.—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101(a) of title 10); or

(2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

(b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) $15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term ''simplified acquisition threshold'' means—

(A) $750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the $5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section

2304(g)(1)(B) of title 10 is deemed to be $10,000,000.

(c) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL ITEM.—

(1) IN GENERAL.—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial item for the purpose of carrying out the procurement.

(2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.—A contract in an amount of more than $15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and section 2306a of title 10.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3721; Pub. L. 114–92, div. A, title VIII, § 816, Nov. 25, 2015, 129 Stat. 897.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1903(a)	41:428a(a), (e).	Pub. L. 93–400, § 32A, as added Pub. L. 108–136, title XIV, § 1443(a)(1), Nov. 24, 2003, 117 Stat. 1675; Pub. L. 108–375, title VIII, § 822, Oct. 28, 2004, 118 Stat. 2016.
1903(b)	41:428a(b), (c).	
1903(c)	41:428a(d).	

AMENDMENTS

2015—Subsec. (b)(2)(A). Pub. L. 114–92, § 816(1), substituted ''$750,000'' for ''$250,000''.

Subsec. (b)(2)(B). Pub. L. 114–92, § 816(2), substituted ''$1,500,000'' for ''$1,000,000''.

§ 1904. Certain transactions for defense against attack

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency that engages in basic research, applied research, advanced research, and development projects that are necessary to the responsibilities of the executive agency in the field of research and development and have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack may exercise the same authority (subject to the same restrictions and conditions) with respect to the research and projects as the Secretary of Defense may exercise under section 2371 of title 10, except for subsections (b) and (f) of section 2371.

(2) PROTOTYPE PROJECTS.—The head of an executive agency, under the authority of paragraph (1), may carry out prototype projects that meet the requirements of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845[1] of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under section 845(a) of that Act and that the period of authority to carry out projects under section 845(a) of that Act terminates as provided in section 845(i) of that Act.

(3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying the requirements and conditions of section 845 of that Act under this subsection—

(A) section 845(c) of that Act shall apply with respect to prototype projects carried out under paragraph (2); and

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under section 845(d) of that Act.

(4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

(A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) DEPARTMENT OF HOMELAND SECURITY.—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) ANNUAL REPORT.—The annual report of the head of an executive agency that is required under section 2371(h) of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) TERMINATION OF AUTHORITY.—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3721.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1904	41:428a note.	Pub. L. 108–136, title XIV, § 1441, Nov. 24, 2003, 117 Stat. 1673.

In subsection (a)(2), the reference to subsection (g) of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note) is changed to subsection (i) because of section 847(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, 117 Stat. 1554), which redesignated subsection (g) as subsection (h), and section 823(2) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163, 119 Stat. 3387), which redesignated subsection (h) as subsection (i).

In subsection (a)(3)(A), the words ''paragraph (2)'' are substituted for ''this paragraph'' to correct the cross-reference.

In subsection (a)(4)(A), the words ''to use the authority for such project'' are omitted as unnecessary.

[1] See References in Text note below.

In subsection (c), the words ''Committee on Homeland Security and Governmental Affairs'' are substituted for ''Committee on Governmental Affairs'' on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words ''Committee on Oversight and Government Reform'' are substituted for ''Committee on Government Reform'' on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

REFERENCES IN TEXT

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), referred to in subsec. (a)(2), was repealed by Pub. L. 114–92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

§ 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) DEFINITION.—In this section, the term ''Council'' has the meaning given that term in section 1301 of this title.

(b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3722.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1905(a)	no source.	
1905(b)–(d) ..	41:429.	Pub. L. 93–400, § 33, as added Pub. L. 103–355, title IV, § 4101, Oct. 13, 1994, 108 Stat. 3339.

§ 1906. List of laws inapplicable to procurements of commercial items

(a) DEFINITION.—In this section, the term ''Council'' has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial items by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial items.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the applicability of the provision.

(c) SUBCONTRACTS.—

(1) DEFINITION.—In this subsection, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under a contract or subcontract for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (3) does not apply to those subcontracts. This section does not render a provision of law not included on the list inapplicable to subcontracts under a contract for the procurement of commercial items.

(3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law described in subsection (d) shall be included on the list of inapplicable provisions of law required by paragraph (2) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt subcontracts under a contract for the procurement of commercial items from the applicability of the provision.

(4) WAIVER NOT AUTHORIZED.—This subsection does not authorize the waiver of the applicability of any provision of law with respect to any subcontract under a contract with a prime contractor reselling or distributing commercial items of another contractor without adding value.

(d) COVERED LAW.—A provision of law referred to in subsections (b)(2) and (c) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial items.

(e) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (d) is not included on the list of inapplicable provisions of law as required by subsection (b) or (c) and the Council has not made a written determination pursuant to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3723.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1906(a)	no source.	
1906(b)–(e) ..	41:430.	Pub. L. 93–400, § 34, as added Pub. L. 103–355, title VIII, § 8003(a), Oct. 13, 1994, 108 Stat. 3388.

§ 1907. List of laws inapplicable to procurements of commercially available off-the-shelf items

(a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) LAWS TO BE INCLUDED.—A provision of law described in subsection (b) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision.

(3) OTHER AUTHORITIES OR RESPONSIBILITIES NOT AFFECTED.—This section does not modify, supersede, impair, or restrict authorities or responsibilities under—

(A) section 15 of the Small Business Act (15 U.S.C. 644); or

(B) bid protest procedures developed under the authority of—

(i) subchapter V of chapter 35 of title 31;

(ii) section 2305(e) and (f) of title 10; or

(iii) sections 3706 and 3707 of this title.

(b) COVERED LAW.—Except as provided in subsection (a)(3), a provision of law referred to in subsection (a)(1) is a provision of law that the Administrator determines imposes Federal Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services on persons whom the Federal Government has awarded contracts for the procurement of commercially available off-the-shelf items, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercially available off-the-shelf items.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3724.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1907	41:431(a), (b).	Pub. L. 93–400, § 35(a), (b), as added Pub. L. 104–106, title XLII, § 4203(a), Feb. 10, 1996, 110 Stat. 654; Pub. L. 105–85, title X, § 1073(g)(2)(C), Nov. 18, 1997, 111 Stat. 1906.

§ 1908. Inflation adjustment of acquisition-related dollar thresholds

(a) DEFINITION.—In this section, the term ''Council'' has the meaning given that term in section 1301 of this title.

(b) APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the requirement for adjustment under subsection (c) applies to a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the Council determines.

(2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresholds—

(A) in chapter 67 of this title;

(B) in sections 3141 to 3144, 3146, and 3147 of title 40; or

(C) the United States Trade Representative establishes pursuant to title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.).

(3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—This section supersedes the applicability of other provisions of law that provide for the adjustment of a dollar threshold that is adjustable under this section.

(c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

(1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of paragraph (2), the baseline constant dollar value for a dollar threshold—

(A) in effect on October 1, 2000, that was first specified in a law that took effect on or before October 1, 2000, is the October 1, 2000, constant dollar value of that dollar threshold; and

(B) specified in a law that takes effect after October 1, 2000, is the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to that law.

(2) ADJUSTMENT.—On October 1 of each year evenly divisible by 5, the Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (b)(1), to the baseline constant dollar value of that threshold.

(3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjustable under this section shall be adjusted only as provided in this section.

(d) PUBLICATION.—The Council shall publish a notice of the adjusted dollar thresholds under this section in the Federal Register. The thresholds take effect on the date of publication.

(e) CALCULATION.—An adjustment under this section shall be—

(1) calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Secretary of Labor; and

(2) rounded, in the case of a dollar threshold that as calculated under paragraph (1) is—

(A) less than $10,000, to the nearest $500;

(B) not less than $10,000, but less than $100,000, to the nearest $5,000;

(C) not less than $100,000, but less than $1,000,000, to the nearest $50,000;

(D) not less than $1,000,000, but less than $10,000,000, to the nearest $500,000;

(E) not less than $10,000,000, but less than $100,000,000, to the nearest $5,000,000;

(F) not less than $100,000,000, but less than $1,000,000,000, to the nearest $50,000,000; and

(G) $1,000,000,000 or more, to the nearest $500,000,000.

(f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—

(1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may request adjustment of a dollar threshold adjustable under this section that is not included in a notice of adjustment published under subsection (d) by submitting a petition for adjustment to the Administrator.

(2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for adjustment of a dollar threshold under paragraph (1), the Administrator—

(A) shall determine, in writing, whether the dollar threshold is required to be adjusted under this section; and

(B) on determining that it should be adjusted, shall publish in the Federal Register a revised notice of the adjustment dollar thresholds under this section that includes the adjustment of the dollar threshold covered by the petition.

(3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjustment of a dollar threshold pursuant to a petition under this subsection takes effect on the date the revised notice adding the adjustment under paragraph (2)(B) is published.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3725; Pub. L. 114–92, div. A, title VIII, § 817, Nov. 25, 2015, 129 Stat. 897.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1908(a)	no source.	
1908(b)(1)	41:431a(c).	Pub. L. 93–400, § 35A, as added Pub. L. 108–375, title VIII, § 807(a)(1), Oct. 28, 2004, 118 Stat. 2010.
1908(b)(2)	41:431a(d).	
1908(b)(3)	41:431a note.	Pub. L. 108–375, title VIII, § 807(c)(1), Oct. 28, 2004, 118 Stat. 2011.
1908(c)(1), (2).	41:431a(a).	
1908(c)(3)	41:431a note.	Pub. L. 108–375, title VIII, § 807(c)(2), Oct. 28, 2004, 118 Stat. 2011.
1908(d)	41:431a(b).	
1908(e)	41:431a(e).	
1908(f)	41:431a(f).	

In subsection (c)(3), the words ''After the date of the enactment of this Act'' are omitted as obsolete.

In subsection (e)(1), the words ''Secretary of Labor'' are substituted for ''Department of Labor'' because of 29:551.

REFERENCES IN TEXT

The Trade Agreements Act of 1979, referred to in subsec. (b)(2)(C), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144. Title III of the Act is classified generally to subchapter I (§ 2511 et seq.) of chapter 13 of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19 and Tables.

AMENDMENTS

2015—Subsec. (e)(2). Pub. L. 114–92, § 817(1), substituted ''as calculated under paragraph (1)'' for ''on the day before the adjustment'' in introductory provisions.

Subsec. (e)(2)(D) to (G). Pub. L. 114–92, § 817(2), (3), added subpars. (D) to (G) and struck out former subpar. (D) which read as follows: ''$1,000,000 or more, to the nearest $500,000.''

ADJUSTMENT FOR INFLATION OF RIGHT-HAND DRIVE PASSENGER SEDANS

Pub. L. 112–81, div. A, title VIII, § 814(b), Dec. 31, 2011, 125 Stat. 1491, provided that: ''The Department of Defense representative to the Federal Acquisition Regulatory Council established under section 1302 of title 41, United States Code, shall ensure that the threshold established in section 2253 of title 10, United States Code, for the acquisition of right-hand drive passenger sedans is included on the list of dollar thresholds that are subject to adjustment for inflation in accordance with the requirements of section 1908 of title 41, United States Code, and is adjusted pursuant to such provision, as appropriate.''

§ 1909. Management of purchase cards

(a) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—The head of each executive agency that issues and uses purchase cards and convenience checks shall establish and maintain safeguards and internal controls to ensure the following:

(1) There is a record in each executive agency of each holder of a purchase card issued by the agency for official use, annotated with the limitations on single transactions and total transactions that are applicable to the use of each such card or check by that purchase card holder.

(2) Each purchase card holder and individual issued a convenience check is assigned an approving official other than the card holder with the authority to approve or disapprove transactions.

(3) The holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding a summary report to the certifying official in a timely manner of information necessary to enable the certifying official to ensure that the Federal Government ultimately pays only for valid charges that are consistent with the terms of the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(4) Any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(5) Payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(6) Rebates and refunds based on prompt payment, sales volume, or other actions by the agency on purchase card accounts are reviewed for accuracy and properly recorded as a receipt to the agency that pays the monthly bill.

(7) Records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(8) Periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(9) Appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the executive agency.

(10) The executive agency has specific policies regarding the number of purchase cards issued by various component organizations and categories of component organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(11) The executive agency uses effective systems, techniques, and technologies to prevent or identify illegal, improper, or erroneous purchases.

(12) The executive agency invalidates the purchase card of each employee who—

(A) ceases to be employed by the agency, immediately upon termination of the employment of the employee; or

(B) transfers to another unit of the agency, immediately upon the transfer of the employee unless the agency determines that the units are covered by the same purchase card authority.

(13) The executive agency takes steps to recover the cost of any illegal, improper, or erroneous purchase made with a purchase card or convenience check by an employee, including, as necessary, through salary offsets.

(b) GUIDANCE.—The Director of the Office of Management and Budget shall review existing guidance and, as necessary, prescribe additional guidance governing the implementation of the requirements of subsection (a) by executive agencies.

(c) PENALTIES FOR VIOLATIONS.—

(1) IN GENERAL.—The head of each executive agency shall provide for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the agency violate agency policies implementing the guidance required by subsection (b) or make illegal, improper, or erroneous purchases with purchase cards or convenience checks.

(2) DISMISSAL.—Penalties prescribed for employee misuse of purchase cards or convenience checks shall include dismissal of the employee, as appropriate.

(3) REPORTS ON VIOLATIONS.—The guidance prescribed under subsection (b) shall direct each head of an executive agency with more than $10,000,000 in purchase card spending annually, and each Inspector General of such an executive agency, on a semiannual basis, to submit to the Director of the Office of Management and Budget a joint report on violations or other actions covered by paragraph (1) by employees of such executive agency. At a minimum, the report shall set forth the following:

(A) A summary description of confirmed violations involving misuse of a purchase card following completion of a review by the agency or by the Inspector General of the agency.

(B) A summary description of all adverse personnel action, punishment, or other action taken based on each violation.

(d) RISK ASSESSMENTS AND AUDITS.—The Inspector General of each executive agency shall—

(1) conduct periodic assessments of the agency purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments in order to develop a plan for using such risk assessments to determine the scope, frequency, and number of periodic audits of purchase card or convenience check transactions;

(2) perform analysis or audits, as necessary, of purchase card transactions designed to identify—

(A) potentially illegal, improper, or erroneous uses of purchase cards;

(B) any patterns of such uses; and

(C) categories of purchases that could be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices (excluding transactions

made under card-based strategic sourcing arrangements);

(3) report to the head of the executive agency concerned on the results of such analysis or audits; and

(4) report to the Director of the Office of Management and Budget on the implementation of recommendations made to the head of the executive agency to address findings of any analysis or audit of purchase card and convenience check transactions or programs for compilation and transmission by the Director to Congress and the Comptroller General.

(e) RELATIONSHIP TO DEPARTMENT OF DEFENSE PURCHASE CARD REGULATIONS.—The requirements of this section shall not apply to the Department of Defense. See section 2784 of title 10 for provisions relating to management of purchase cards in the Department.

(Added Pub. L. 112–194, § 2(a)(1), Oct. 5, 2012, 126 Stat. 1445.)

DEADLINE FOR GUIDANCE ON MANAGEMENT OF PURCHASE CARDS

Pub. L. 112–194, § 2(c), Oct. 5, 2012, 126 Stat. 1448, provided that: ''The Director of the Office of Management and Budget shall prescribe the guidance required by section 1909(b) of title 41, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act [Oct. 5, 2012].''

CHAPTER 21—RESTRICTIONS ON OBTAINING AND DISCLOSING CERTAIN INFORMATION

Sec.
2101. Definitions.
2102. Prohibitions on disclosing and obtaining procurement information.
2103. Actions required of procurement officers when contacted regarding non-Federal employment.
2104. Prohibition on former official's acceptance of compensation from contractor.
2105. Penalties and administrative actions.
2106. Reporting information believed to constitute evidence of offense.
2107. Savings provisions.

§ 2101. Definitions

In this chapter:

(1) CONTRACTING OFFICER.—The term ''contracting officer'' means an individual who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to the contract.

(2) CONTRACTOR BID OR PROPOSAL INFORMATION.—The term ''contractor bid or proposal information'' means any of the following information submitted to a Federal agency as part of, or in connection with, a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in section 2306a(h) of title 10 with respect to procurements subject to that section and section 3501(a) of this title with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor as ''contractor bid or proposal information'', in accordance with applicable law or regulation.

(3) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given that term in section 102 of title 40.

(4) FEDERAL AGENCY PROCUREMENT.—The term ''Federal agency procurement'' means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

(5) OFFICIAL.—The term ''official'' means—

(A) an officer, as defined in section 2104 of title 5;

(B) an employee, as defined in section 2105 of title 5; and

(C) a member of the uniformed services, as defined in section 2101(3) of title 5.

(6) PROTEST.—The term ''protest'' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31.

(7) SOURCE SELECTION INFORMATION.—The term ''source selection information'' means any of the following information prepared for use by a Federal agency to evaluate a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

(I) Reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as ''source selection information'' based on a case-by-case determination by the head of the agency, the head's designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3727.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2101(1)	41:423(f)(5).	Pub. L. 93–400, § 27(f), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 662.
2101(2)	41:423(f)(1).	
2101(3)	41:423(f)(3).	
2101(4)	41:423(f)(4).	
2101(5)	41:423(f)(7).	
2101(6)	41:423(f)(6).	
2101(7)	41:423(f)(2).	

§ 2102. Prohibitions on disclosing and obtaining procurement information

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) IN GENERAL.—Except as provided by law, a person described in paragraph (3) shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction in paragraph (1), an employee of a private sector organization assigned to an agency under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal information or source selection information during the 3-year period after the employee's assignment ends, except as provided by law.

(3) APPLICATION.—Paragraph (1) applies to a person that—

(A)(i) is a present or former official of the Federal Government; or

(ii) is acting or has acted for or on behalf of, or who is advising or has advised the Federal Government with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3728.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2102(a)	41:423(a).	Pub. L. 93–400, § 27(a), (b), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 659; Pub. L. 107–347, title II, § 209(d)(4), Dec. 17, 2002, 116 Stat. 2930.
2102(b)	41:423(b).	

§ 2103. Actions required of procurement officers when contacted regarding non-Federal employment

(a) ACTIONS REQUIRED.—An agency official participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold who contacts or is contacted by a person that is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official shall—

(1) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(A) reject the possibility of non-Federal employment; or

(B) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until the agency authorizes the official to resume participation in the procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(i) the person is no longer a bidder or offeror in that Federal agency procurement; or

(ii) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(b) RETENTION OF REPORTS.—The agency shall retain each report required by this section for not less than 2 years following the submission of the report. The reports shall be made available to the public on request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of that section may be withheld from disclosure to the public.

(c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) An official who knowingly fails to comply with the requirements of this section.

(2) A bidder or offeror that engages in employment discussions with an official who is subject to the restrictions of this section, knowing that the official has not complied with paragraph (1) or (2) of subsection (a).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3728.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2103(a)	41:423(c)(1).	Pub. L. 93–400, § 27(c), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 660.
2103(b)	41:423(c)(2).	
2103(c)	41:423(c)(3), (4).	

§ 2104. Prohibition on former official's acceptance of compensation from contractor

(a) PROHIBITION.—A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after the official—

(1) served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(3) personally made for the Federal agency a decision to—

(A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of $10,000,000;

(C) approve issuance of one or more contract payments in excess of $10,000,000 to that contractor; or

(D) pay or settle a claim in excess of $10,000,000 with that contractor.

(b) WHEN COMPENSATION MAY BE ACCEPTED.—Subsection (a) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (1), (2), or (3) of subsection (a).

(c) IMPLEMENTING REGULATIONS.—Regulations implementing this section shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this section from accepting compensation from a particular contractor.

(d) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) A former official who knowingly accepts compensation in violation of this section.

(2) A contractor that provides compensation to a former official knowing that the official accepts the compensation in violation of this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3729.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2104(a)	41:423(d)(1).	Pub. L. 93–400, § 27(d), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 660.
2104(b)	41:423(d)(2).	
2104(c)	41:423(d)(5).	
2104(d)	41:423(d)(3), (4).	

§ 2105. Penalties and administrative actions

(a) CRIMINAL PENALTIES.—A person that violates section 2102 of this title to exchange information covered by section 2102 of this title for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement contract shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) CIVIL PENALTIES.—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—

(1) an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and

(2) an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.

(c) ADMINISTRATIVE ACTIONS.—

(1) TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.—A Federal agency that receives information that a contractor or a person has violated section 2102, 2103, or 2104 of this title shall consider taking one or more of the following actions, as appropriate:

(A) Canceling the Federal agency procurement, if a contract has not yet been awarded.

(B) Rescinding a contract with respect to which—

(i) the contractor or someone acting for the contractor has been convicted for an offense punishable under subsection (a); or

(ii) the head of the agency that awarded the contract has determined, based on a preponderance of the evidence, that the

contractor or a person acting for the contractor has engaged in conduct constituting the offense.

(C) Initiating a suspension or debarment proceeding for the protection of the Federal Government in accordance with procedures in the Federal Acquisition Regulation.

(D) Initiating an adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Federal agency rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For purposes of a suspension or debarment proceeding initiated pursuant to paragraph (1)(C), engaging in conduct constituting an offense under section 2102, 2103, or 2104 of this title affects the present responsibility of a Federal Government contractor or subcontractor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3730.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2105(a)	41:423(e)(1).	Pub. L. 93–400, § 27(e), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 661.
2105(b)	41:423(e)(2).	
2105(c)	41:423(e)(3).	

In subsection (a), the word ''violates'' is substituted for ''engages in conduct constituting a violation of'' to eliminate unnecessary words.

In subsection (b), the words ''liable to the Federal Government for'' are substituted for ''subject to'' for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(1), the words ''has violated'' are substituted for ''has engaged in conduct constituting a violation of'' to eliminate unnecessary words.

§ 2106. Reporting information believed to constitute evidence of offense

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3731.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2106	41:423(g).	Pub. L. 93–400, § 27(g), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 663.

§ 2107. Savings provisions

This chapter does not—

(1) restrict the disclosure of information to, or its receipt by, a person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3731.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2107	41:423(h).	Pub. L. 93–400, § 27(h), as added Pub. L. 100–679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101–189, title VIII, § 814(a)–(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101–510, title XIV, § 1484(*l*)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104–106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 663.

CHAPTER 23—MISCELLANEOUS

Sec.
2301. Use of electronic commerce in Federal procurement.
2302. Rights in technical data.
2303. Ethics safeguards related to contractor conflicts of interest.
2304. Conflict of interest standards for consultants.
2305. Authority of Director of Office of Management and Budget not affected.
2306. Openness of meetings.
2307. Comptroller General's access to information.
2308. Modular contracting for information technology.
2309. Protection of constitutional rights of contractors.
2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items.
2311. Enhanced transparency on interagency contracting and other transactions.
2312. Contingency Contracting Corps.
2313. Database for Federal agency contract and grant officers and suspension and debarment officials.

§ 2301. Use of electronic commerce in Federal procurement

(a) DEFINITION.—For the purposes of this section, the term ''electronic commerce'' means electronic techniques for accomplishing business transactions, including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfers, and electronic data interchange.

(b) ESTABLISHMENT, MAINTENANCE, AND USE OF ELECTRONIC COMMERCE PROCEDURES AND PROCESSES.—The head of each executive agency, after consulting with the Administrator, shall establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of the procurement system of the agency.

(c) APPLICABLE STANDARDS.—In conducting electronic commerce, the head of an executive agency shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

(d) REQUIREMENTS OF SYSTEMS, TECHNOLOGIES, PROCEDURES, AND PROCESSES.—The head of each executive agency shall ensure that systems, technologies, procedures, and processes established pursuant to this section—

(1) are implemented with uniformity throughout the agency, to the extent practicable;

(2) are implemented only after granting due consideration to the use or partial use, as appropriate, of existing electronic commerce and electronic data interchange systems and infrastructures such as the Federal acquisition computer network architecture known as FACNET;

(3) facilitate access to Federal Government procurement opportunities, including opportunities for small business concerns, socially and economically disadvantaged small business concerns, and business concerns owned predominantly by women; and

(4) ensure that any notice of agency requirements or agency solicitation for contract opportunities is provided in a form that allows convenient and universal user access through a single, Government-wide point of entry.

(e) IMPLEMENTATION.—In carrying out the requirements of this section, the Administrator shall—

(1) issue policies to promote, to the maximum extent practicable, uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may require departures from uniform procedures and processes in appropriate cases, when warranted because of the agency mission;

(2) ensure that the head of each executive agency complies with the requirements of subsection (d); and

(3) consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3732.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2301(a)	41:426(f).	Pub. L. 93–400, § 30, as added Pub. L. 103–355, title IX, § 9001(a), Oct. 13, 1994, 108 Stat. 3399; Pub. L. 105–85, title VIII, § 850(a), Nov. 18, 1997, 111 Stat. 1847; Pub. L. 106–398, § 1 [[div. A], title VIII, § 810(d)], Oct. 30, 2000, 114 Stat. 1654A–210.
2301(b)	41:426(a).	
2301(c)	41:426(b).	
2301(d)	41:426(c).	
2301(e)	41:426(d).	

In this section, the text of 41:426(e) is omitted as obsolete because the last report was to be submitted not later than March 1, 2004.

In subsection (c), the word ''executive'' is added for clarity and for consistency in the revised section.

In subsection (e)(2), the words ''with respect to the agency systems, technologies, procedures, and processes established pursuant to this section'' are omitted as unnecessary.

STREAMLINING PROCUREMENT THROUGH ELECTRONIC COMMERCE

Memorandum of President of the United States, Oct. 28, 1993, 58 F.R. 58095, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

The Federal Government spends $200 billion annually buying goods and services. Unfortunately, the red tape and burdensome paperwork of the current procurement system increases costs, produces unnecessary delays, and reduces Federal work force productivity. Moving to an electronic commerce system to simplify and streamline the purchasing process will promote customer service and cost-effectiveness. The electronic exchange of acquisition information between the private sector and the Federal Government also will increase competition by improving access to Federal contracting opportunities for the more than 300,000 vendors currently doing business with the Government, particularly small businesses, as well as many other vendors who find access to bidding opportunities difficult under the current system. For these reasons, I am committed to fundamentally altering and improving the way the Federal Government buys goods and services by ensuring

that electronic commerce is implemented for appropriate Federal purchases as quickly as possible.

1. OBJECTIVES.

The objectives of this electronic commerce initiative are to:

(a) exchange procurement information—such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents—electronically between the private sector and the Federal Government to the maximum extent practical;

(b) provide businesses, including small, small disadvantaged, and women-owned businesses, with greater access to Federal procurement opportunities;

(c) ensure that potential suppliers are provided simplified access to the Federal Government's electronic commerce system;

(d) employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data; and

(e) use agency and industry systems and networks to enable the Government and potential suppliers to exchange information and access Federal procurement data.

2. IMPLEMENTATION.

The President's Management Council, in coordination with the Office of Federal Procurement Policy of the Office of Management and Budget, and in consultation with appropriate Federal agencies with applicable technical and functional expertise, as necessary, shall provide overall leadership, management oversight, and policy direction to implement electronic commerce in the executive branch through the following actions:

(a) by March 1994, define the architecture for the Government-wide electronic commerce acquisition system and identify executive departments or agencies responsible for developing, implementing, operating, and maintaining the Federal electronic system;

(b) by September 1994, establish an initial electronic commerce capability to enable the Federal Government and private vendors to electronically exchange standardized requests for quotations, quotes, purchase orders, and notice of awards and begin Government-wide implementation;

(c) by July 1995, implement a full scale Federal electronic commerce system that expands initial capabilities to include electronic payments, document interchange, and supporting databases; and

(d) by January 1997, complete Government-wide implementation of electronic commerce for appropriate Federal purchases, to the maximum extent possible.

This implementation schedule should be accelerated where practicable.

The head of each executive department or agency shall:

(a) ensure that budgetary resources are available, within approved budget levels, for electronic commerce implementation in each respective department or agency;

(b) assist the President's Management Council in implementing the electronic commerce system as quickly as possible in accordance with the schedules established herein; and

(c) designate one or more senior level employees to assist the President's Management Council and serve as a point of contact for the development and implementation of the Federal electronic commerce system within each respective department or agency.

3. NO PRIVATE RIGHTS CREATED.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 2302. Rights in technical data

(a) WHERE DEFINED.—The legitimate proprietary interest of the Federal Government and of a contractor in technical or other data shall be defined in regulations prescribed as part of the Federal Acquisition Regulation.

(b) GENERAL EXTENT OF REGULATIONS.—

(1) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under subsection (a) may not impair a right of the Federal Government or of a contractor with respect to a patent or copyright or another right in technical data otherwise established by law.

(2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOVERNMENT.—With respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that the Federal Government may not require a person that has developed a product (or process offered or to be offered for sale to the public) to provide to the Federal Government technical data relating to the design (or development or manufacture of the product or process) as a condition of procurement by the Federal Government of the product or process. This paragraph does not apply to data that may be necessary for the Federal Government to operate and maintain the product or use the process if the Federal Government obtains it as an element of performance under the contract.

(c) TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.—

(1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise expressly provided by Federal statute, with respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that—

(A) the Federal Government has unlimited rights in technical data developed exclusively with Federal funds if delivery of the data—

(i) was required as an element of performance under a contract; and

(ii) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future; and

(B) the Federal Government and each agency of the Federal Government has an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Federal Government) technical data developed exclusively with Federal funds.

(2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOVERNMENT.—The requirements of paragraph (1) are in addition to and not in lieu of any other rights the Federal Government may have pursuant to law.

(d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The following factors shall be considered in prescribing regulations under subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the

statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97–219, 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the Federal Government in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(e) PROVISIONS REQUIRED IN CONTRACTS.—Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the Federal Government and the contractor or subcontractor (at any tier) regarding technical data to be delivered under the contract;

(2) specifying technical data to be delivered under the contract and schedules for delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for technical data to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the Federal Government to use the data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver the revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise another remedy the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3733.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302(a)	41:418a(a) (1st sentence).	Pub. L. 93–400, § 21, as added Pub. L. 98–577, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3074; Pub. L. 99–145, title IX, § 961(d)(2), Nov. 8, 1985, 99 Stat. 704.
2302(b)	41:418a(a) (2d, last sentences).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302(c)	41:418a(b).	
2302(d)	41:418a(c).	
2302(e)	41:418a(d).	

In subsection (a), the words ''Federal Acquisition Regulation'' are substituted for ''single system of Government-wide procurement regulations as defined in section 403(4) of this title'' because section 3(a)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100–679, 102 Stat. 4055) substituted ''Federal Acquisition Regulation'' for ''single system of Government-wide procurement regulations'' in section 6 of the Office of Federal Procurement Policy Act (Public Law 93–400, 88 Stat. 797, 41:406) and because section 3(c) of the Office of Federal Procurement Policy Act Amendments of 1988 (102 Stat. 4056) struck section 4(4) of the Office of Federal Procurement Policy Act (88 Stat. 797, 41:403(4)), as amended by section 4 of the Office of Federal Procurement Policy Act Amendments of 1983 (Public Law 98–191, 97 Stat. 1326), which had defined ''single system of Government-wide procurement regulations''.

§ 2303. Ethics safeguards related to contractor conflicts of interest

(a) DEFINITION.—In this section, the term ''relevant acquisition function'' means an acquisition function closely associated with inherently governmental functions.

(b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.—

(1) DEVELOPMENT AND ISSUANCE OF POLICY.—The Administrator shall develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) ELEMENTS OF POLICY.—The policy shall—

(A) define ''personal conflict of interest'' as it relates to contractor employees performing relevant acquisition functions; and

(B) require each contractor whose employees perform relevant acquisition functions to—

(i) identify and prevent personal conflicts of interest for the employees;

(ii) prohibit contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain;

(iii) report any personal conflict-of-interest violation by an employee to the applicable contracting officer or contracting officer's representative as soon as it is identified;

(iv) maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(v) have procedures in place to screen for potential conflicts of interest for all employees performing relevant acquisition functions; and

(vi) take appropriate disciplinary action in the case of employees who fail to comply with policies established pursuant to this section.

(3) CONTRACT CLAUSE.—

(A) CONTENTS.—The Administrator shall develop a personal conflicts-of-interest clause or a set of clauses for inclusion in solicitations and contracts (and task or delivery orders) for the performance of relevant acquisition functions that sets forth—

(i) the personal conflicts-of-interest policy developed under this subsection; and

(ii) the contractor's responsibilities under the policy.

(B) EFFECTIVE DATE.—Subparagraph (A) shall take effect 300 days after October 14, 2008, and shall apply to—

(i) contracts entered into on or after that effective date; and

(ii) task or delivery orders awarded on or after that effective date, regardless of whether the contracts pursuant to which the task or delivery orders are awarded are entered before, on, or after October 14, 2008.

(4) APPLICABILITY.—

(A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—This subsection shall apply to any contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of this title) if the contract is for the performance of relevant acquisition functions.

(B) PARTIAL APPLICABILITY.—If only a portion of a contract described in subparagraph (A) is for the performance of relevant acquisition functions, then this subsection applies only to that portion of the contract.

(c) BEST PRACTICES.—The Administrator shall, in consultation with the Director of the Office of Government Ethics, develop and maintain a repository of best practices relating to the prevention and mitigation of organizational and personal conflicts of interest in Federal contracting.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3735.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2303(a)	no source.	
2303(b), (c)	41:405c(a), (c).	Pub. L. 110–417, [div. A], title VIII, § 841(a), (c), Oct. 14, 2008, 122 Stat. 4537, 4539.

In this section, the words ''relevant acquisition functions'' are substituted for ''acquisition functions closely associated with inherently governmental functions'' because of subsection (a).

In subsection (b), the words ''Not later than 270 days after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill.

In subsection (b)(4)(A), the words ''Except as provided in subparagraph (B)'' are omitted as unnecessary.

DEADLINE FOR ISSUANCE OF STANDARD POLICY

Pub. L. 111–350, § 6(f)(1), Jan. 4, 2011, 124 Stat. 3854, provided that: ''The requirement in section 2303(b)(1) of title 41, United States Code, to issue a policy shall be done not later than 270 days after October 14, 2008.''

REVIEW OF FEDERAL ACQUISITION REGULATION RELATING TO CONFLICTS OF INTEREST

Pub. L. 110–417, [div. A], title VIII, § 841(b), Oct. 14, 2008, 122 Stat. 4539, provided that:

''(1) REVIEW.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Administrator for Federal Procurement Policy, in consultation with the Director of the Office of Government Ethics, shall review the Federal Acquisition Regulation to—

''(A) identify contracting methods, types and services that raise heightened concerns for potential personal and organizational conflicts of interest; and

''(B) determine whether revisions to the Federal Acquisition Regulation are necessary to—

''(i) address personal conflicts of interest by contractor employees with respect to functions other than those described in subsection (a) [now 41 U.S.C. 2303(b)]; or

''(ii) achieve sufficiently rigorous, comprehensive, and uniform government-wide policies to prevent and mitigate organizational conflicts of interest in Federal contracting.

''(2) REGULATORY REVISIONS.—If the Administrator determines pursuant to the review under paragraph (1)(B) that revisions to the Federal Acquisition Regulation are necessary, the Administrator shall work with the Federal Acquisition Regulatory Council to prescribe appropriate revisions to the regulations, including the development of appropriate contract clauses.

''(3) REPORT.—Not later than March 1, 2010, the Administrator shall submit to the Committees on Armed Services of the Senate and House of Representatives, the Committee on Homeland Security and Governmental Affairs in the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a report setting forth such findings and determinations under subparagraphs (A) and (B) of paragraph (1), together with an assessment of any revisions to the Federal Acquisition Regulation that may be necessary.''

§ 2304. Conflict of interest standards for consultants

(a) CONTENT OF REGULATIONS.—The Administrator shall prescribe under this division Government-wide regulations that set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) procedures, including registration, certification, and enforcement requirements as may be appropriate, to promote compliance with the standards.

(b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by subsection (a) apply to—

(1) advisory and assistance services provided to the Federal Government 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;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of the services in the regulations is necessary to identify and evaluate the potential for conflicts 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

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

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

SENATE REVISION AMENDMENT

In text, ''representatives of the Comptroller General'' substituted for ''his representatives'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

§ 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

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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 agency 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

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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 Oversight and Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of the authority, both government-wide and for each department and agency.

(d) EXPIRATION.—The authority under this section expires 10 years after November 24, 2003.

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

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2310	41:437.	Pub. L. 93–400, § 41, as added Pub. L. 108–136, title XIV, § 1431(a), Nov. 24, 2003, 117 Stat. 1671.

In subsection (c), the words ''Committees on Homeland Security and Governmental Affairs'' are substituted for ''Committees on Governmental Affairs'' on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words ''Committees on Oversight and Government Reform'' are substituted for ''Committees on Government Reform'' on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

§ 2311. Enhanced transparency on interagency contracting and other transactions

The Director of the Office of Management and Budget shall direct appropriate revisions to the Federal Procurement Data System or any successor system to facilitate the collection of complete, timely, and reliable data on interagency contracting actions and on transactions other than contracts, grants, and cooperative agreements issued pursuant to section 2371 of title 10 or similar authorities. The Director of the Office of Management and Budget shall ensure that data, consistent with what is collected for contract actions, is obtained on—

(1) interagency contracting actions, including data at the task or delivery-order level; and

(2) other transactions, including the initial award and any subsequent modifications awarded or orders issued (other than transactions that are reported through the Federal Assistance Awards Data System).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3739.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2311	41:405 note.	Pub. L. 110–417, [div. A], title VIII, § 874(a), Oct. 14, 2008, 122 Stat. 4558.

In the first sentence, the words ''Not later than one year after the date of enactment of this Act'' are omitted because of section 6(f) of the bill.

DEADLINE FOR REVISIONS IN FEDERAL PROCUREMENT DATA SYSTEM OR SUCCESSOR SYSTEM

Pub. L. 111–350, § 6(f)(2), Jan. 4, 2011, 124 Stat. 3855, provided that: ''The requirement in section 2311 of title 41, United States Code, to direct appropriate revisions in the Federal Procurement Data System or any successor system shall be done not later than one year after October 14, 2008.''

§ 2312. Contingency Contracting Corps

(a) DEFINITION.—In this section, the term ''Corps'' means the Contingency Contracting Corps established in subsection (b).

(b) ESTABLISHMENT.—The Administrator of General Services, pursuant to policies established by the Office of Management and Budget, and in consultation with the Secretary of Defense and the Secretary of Homeland Security, shall establish a Government-wide Contingency Contracting Corps.

(c) FUNCTION.—The members of the Corps shall be available for deployment in responding to an emergency or major disaster, or a contingency operation, both within or outside the continental United States.

(d) APPLICABILITY.—The authorities provided in this section apply with respect to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used—

(1) in support of a contingency operation as defined in section 101(a)(13) of title 10; or

(2) to respond to an emergency or major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(e) MEMBERSHIP.—Membership in the Corps shall be voluntary and open to all Federal employees and members of the Armed Forces who are members of the Federal acquisition workforce.

(f) EDUCATION AND TRAINING.—The Administrator of General Services may, in consultation with the Director of the Federal Acquisition Institute and the Chief Acquisition Officers Council, establish educational and training requirements for members of the Corps. Education and training carried out pursuant to the requirements shall be paid for from funds available in the acquisition workforce training fund established pursuant to section 1703(i) of this title.

(g) SALARY.—The salary for a member of the Corps shall be paid—

(1) in the case of a member of the Armed Forces, out of funds available to the Armed Force concerned; and

(2) in the case of a Federal employee, out of funds available to the employing agency.

(h) AUTHORITY TO DEPLOY THE CORPS.—

(1) DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall have the authority, upon request by an executive agency, to determine when members of the Corps shall be deployed, with the concurrence of the head of the agency or agencies employing the members to be deployed.

(2) SECRETARY OF DEFENSE.—Nothing in this section shall preclude the Secretary of Defense or the Secretary's designee from deploying members of the Armed Forces or civilian personnel of the Department of Defense in support of a contingency operation as defined in section 101(a)(13) of title 10.

(i) ANNUAL REPORT.—

(1) IN GENERAL.—The Administrator of General Services shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate and the Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives an annual report on the status of the Corps as of September 30 of each fiscal year.

(2) CONTENT.—Each report under paragraph (1) shall include the number of members of the

Corps, the total cost of operating the program, the number of deployments of members of the program, and the performance of members of the program in deployment.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3739.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2312 (except subsection (a)).	41:440.	Pub. L. 93–400, § 44, as added Pub. L. 110–417, [div. A], title VIII, § 870(a), Oct. 14, 2008, 122 Stat. 4554.
2312(a)	no source.	

§ 2313. Database for Federal agency contract and grant officers and suspension and debarment officials

(a) IN GENERAL.—Subject to the authority, direction, and control of the Director of the Office of Management and Budget, the Administrator of General Services shall establish and maintain a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants.

(b) PERSONS COVERED.—The database shall cover the following:

(1) Any person awarded a Federal agency contract or grant in excess of $500,000, if any information described in subsection (c) exists with respect to the person.

(2) Any person awarded such other category or categories of Federal agency contract as the Federal Acquisition Regulation may provide, if any information described in subsection (c) exists with respect to the person.

(c) INFORMATION INCLUDED.—With respect to a covered person, the database shall include information (in the form of a brief description) for the most recent 5-year period regarding the following:

(1) Each civil or criminal proceeding, or any administrative proceeding, in connection with the award or performance of a contract or grant with the Federal Government with respect to the person during the period to the extent that the proceeding results in the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(i) the payment of a monetary fine or penalty of $5,000 or more; or

(ii) the payment of a reimbursement, restitution, or damages in excess of $100,000.

(D) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in subparagraph (A), (B), or (C).

(E) In an administrative proceeding—

(i) a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note; Public Law 111–84); or

(ii) a substantiated allegation, pursuant to section 1704(b) of the National Defense Authorization Act for Fiscal Year 2013, that the contractor, a subcontractor, or an agent of the contractor or subcontractor engaged in any of the activities described in section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)).

(2) Each Federal contract and grant awarded to the person that was terminated in the period due to default.

(3) Each Federal suspension and debarment of the person.

(4) Each Federal administrative agreement entered into by the person and the Federal Government in the period to resolve a suspension or debarment proceeding.

(5) Each final finding by a Federal official in the period that the person has been determined not to be a responsible source under paragraph (3) or (4) of section 113 of this title.

(6) Other information that shall be provided for purposes of this section in the Federal Acquisition Regulation.

(7) To the maximum extent practicable, information similar to the information covered by paragraphs (1) to (4) in connection with the award or performance of a contract or grant with a State government.

(8) Whether the person is included on any of the following lists maintained by the Office of Foreign Assets Control of the Department of the Treasury:

(A) The specially designated nationals and blocked persons list (commonly known as the ''SDN list'').

(B) The sectoral sanctions identification list.

(C) The foreign sanctions evaders list.

(D) The list of persons sanctioned under the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) that do not appear on the SDN list (commonly known as the ''Non-SDN Iranian Sanctions Act list'').

(E) The list of foreign financial institutions subject to part 561 of title 31, Code of Federal Regulations.

(d) REQUIREMENTS RELATING TO DATABASE INFORMATION.—

(1) DIRECT INPUT AND UPDATE.—The Administrator of General Services shall design and maintain the database in a manner that allows the appropriate Federal agency officials to directly input and update information in the database relating to actions that the officials have taken with regard to contractors or grant recipients.

(2) TIMELINESS AND ACCURACY.—The Administrator of General Services shall develop policies to require—

(A) the timely and accurate input of information into the database;

(B) the timely notification of any covered person when information relevant to the person is entered into the database; and

(C) opportunities for any covered person to submit comments pertaining to information about the person for inclusion in the database.

(3) INFORMATION ON CORPORATIONS.—The information in the database on a person that is a corporation shall, to the extent practicable, include information on any parent, subsidiary, or successor entities to the corporation in a manner designed to give the acquisition officials using the database a comprehensive understanding of the performance and integrity of the corporation in carrying out Federal contracts and grants.

(e) USE OF DATABASE.—

(1) AVAILABILITY TO GOVERNMENT OFFICIALS.—The Administrator of General Services shall ensure that the information in the database is available to appropriate acquisition officials of Federal agencies, other government officials as the Administrator of General Services determines appropriate, and, on request, the Chairman and Ranking Member of the committees of Congress having jurisdiction.

(2) REVIEW AND ASSESSMENT OF DATA.—

(A) IN GENERAL.—Before awarding a contract or grant in excess of the simplified acquisition threshold under section 134 of this title, the Federal agency official responsible for awarding the contract or grant shall review the database and consider all information in the database with regard to any offer or proposal, and in the case of a contract, shall consider other past performance information available with respect to the offeror in making any responsibility determination or past performance evaluation for the offeror.

(B) DOCUMENTATION IN CONTRACT FILE.—The contract file for each contract of a Federal agency in excess of the simplified acquisition threshold shall document the manner in which the material in the database was considered in any responsibility determination or past performance evaluation.

(f) DISCLOSURE IN APPLICATIONS.—The Federal Acquisition Regulation shall require that persons with Federal agency contracts and grants valued in total greater than $10,000,000 shall—

(1) submit to the Administrator of General Services, in a manner determined appropriate by the Administrator of General Services, the information subject to inclusion in the database as listed in subsection (c) current as of the date of submittal of the information under this subsection; and

(2) update the information submitted under paragraph (1) on a semiannual basis.

(g) RULEMAKING.—The Administrator of General Services shall prescribe regulations that may be necessary to carry out this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3740; Pub. L. 111–212, title III, § 3010, July 29, 2010, 124 Stat. 2340; Pub. L. 111–383, div. A, title VIII, § 834(d), Jan. 7, 2011, 124 Stat. 4279; Pub. L. 112–239, div. A, title VIII, § 852, title XVII, § 1704(d)(2), Jan. 2, 2013, 126 Stat. 1856, 2096; Pub. L. 113–291, div. A, title XII, § 1270, Dec. 19, 2014, 128 Stat. 3587.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from section 417b of former Title 41, Public Contracts, which was amended by Pub. L. 111–212, title III, § 3010, July 29, 2010, 124 Stat. 2340, and Pub. L. 111–383, div. A, title VIII, § 834(d), Jan. 7, 2011, 124 Stat. 4279, prior to being repealed and reenacted as this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For applicability of those amendments to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 417b of former Title 41 was amended by adding at the end of subsec. (e)(1) the following: ''In addition, the Administrator shall post all such information, excluding past performance reviews, on a publicly available Internet website.'' and by adding at the end of subsec. (c)(1) the following new subparagraph:

''(E) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note).''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2313	41:417b.	Pub. L. 110–417, [div. A], title VIII, § 872, Oct. 14, 2008, 122 Stat. 4555.

In subsection (a), the words ''not later than one year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill.

In subsection (c)(7), the word ''practicable'' is substituted for ''practical'' to correct an error in the law.

In subsection (f), the words ''Not later than one year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The words ''shall require'' are substituted for ''shall be amended to require'' to reflect the permanence of the provision.

In subsection (f)(2), the words ''the information submitted under paragraph (1)'' are substituted for ''such information'' for clarity.

REFERENCES IN TEXT

Section 1704(b) of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (c)(1)(E)(ii), is section 1704(b) of Pub. L. 112–239, which is classified to section 7104b(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2014—Subsec. (c)(8). Pub. L. 113–291 added par. (8).

2013—Subsec. (c)(1)(E). Pub. L. 112–239, § 1704(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E), as added by Pub. L. 111–383, § 834(d), read as follows: ''(E) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note).'' See Amendments Not Shown in Text note above.

Subsec. (d)(3). Pub. L. 112–239, § 852, added par. (3).

DEADLINE FOR ESTABLISHING DATABASE

Pub. L. 111–350, § 6(f)(3), Jan. 4, 2011, 124 Stat. 3855, provided that: ''The requirement in section 2313(a) of title 41, United States Code, to establish a database

shall be done not later than one year after October 14, 2008.''

DEADLINE FOR AMENDING FEDERAL ACQUISITION REGULATION

Pub. L. 111–350, § 6(f)(4), Jan. 4, 2011, 124 Stat. 3855, provided that: ''The Federal Acquisition Regulation shall be amended to meet the requirements of sections 2313(f), 3302(b) and (d), 4710(b), and 4711(b) of title 41, United States Code, not later than one year after October 14, 2008.''

DIVISION C—PROCUREMENT

DEFINITIONS

For additional definitions of terms used in this division, with certain exceptions, see section 102 of Title 40, Public Buildings, Property, and Works.

CHAPTER 31—GENERAL

Sec.
3101. Applicability.
3102. Delegation and assignment of powers, functions, and responsibilities.
3103. Acquisition programs.
3104. Small business concerns.
3105. New contracts and grants and merit-based selection procedures.
3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division.

UNIFORM CONTRACT WRITING SYSTEM REQUIREMENTS

Pub. L. 112–239, div. A, title VIII, § 862, Jan. 2, 2013, 126 Stat. 1859, provided that:

''(a) UNIFORM STANDARDS AND CONTROLS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the officials specified in subsection (b) shall—

''(1) establish uniform data standards, internal control requirements, independent verification and validation requirements, and business process rules for processing procurement requests, contracts, receipts, and invoices by the Department of Defense or other executive agencies, as applicable;

''(2) establish and maintain one or more approved electronic contract writing systems that conform with the standards, requirements, and rules established pursuant to paragraph (1); and

''(3) require the use of electronic contract writing systems approved in accordance with paragraph (2) for all contracts entered into by the Department of Defense or other executive agencies, as applicable.

''(b) COVERED OFFICIALS.—The officials specified in this subsection are the following:

''(1) The Secretary of Defense, with respect to the Department of Defense and the military departments.

''(2) The Administrator for Federal Procurement Policy, with respect to the executive agencies other than the Department of Defense and the military departments.

''(c) ELECTRONIC WRITING SYSTEMS FOR DEPARTMENT OF STATE AND USAID.—Notwithstanding subsection (b)(2), the Secretary of State and the Administrator of the United States Agency for International Development may meet the requirements of subsection (a)(2) with respect to approved electronic contract writing systems for the Department of State and the United States Agency for International Development, respectively, if the Secretary and the Administrator, as the case may be, demonstrate to the Administrator for Federal Procurement Policy that prior investment of resources in existing contract writing systems will result in the most cost effective and efficient means to satisfy such requirements.

''(d) PHASE-IN OF IMPLEMENTATION OF REQUIREMENT FOR APPROVED SYSTEMS.—The officials specified in subsection (b) may phase in the implementation of the requirement to use approved electronic contract writing systems in accordance with subsection (a)(3) over a period of up to five years beginning with the date of the enactment of this Act [Jan. 2, 2013].

''(e) REPORTS.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the officials specified in subsection (b) shall each submit to the appropriate committees of Congress a report on the implementation of the requirements of this section. Each report shall, at a minimum—

''(1) describe the standards, requirements, and rules established pursuant to subsection (a)(1);

''(2) identify the electronic contract writing systems approved pursuant to subsection (a)(2) and, if multiple systems are approved, explain why the use of such multiple systems is the most efficient and effective approach to meet the contract writing needs of the Federal Government; and

''(3) provide the schedule for phasing in the use of approved electronic contract writing systems in accordance with subsections (a)(3) and (d).

''(f) DEFINITIONS.—In this section:

''(1) The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

''(2) The term 'executive agency' has the meaning given that term in section 133 of title 41, United States Code.''

§ 3101. Applicability

(a) IN GENERAL.—An executive agency shall make purchases and contracts for property and services in accordance with this division and implementing regulations of the Administrator of General Services.

(b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

(1) SIMPLIFIED ACQUISITION THRESHOLD.—

(A) DEFINITION.—For purposes of an acquisition by an executive agency, the simplified acquisition threshold is as specified in section 134 of this title.

(B) INAPPLICABLE LAWS.—A law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of this title does not apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of this title apply in executive agencies as provided in section 1901.

(c) EXCEPTIONS.—

(1) IN GENERAL.—This division does not apply—

(A) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(B) except as provided in paragraph (2), when this division is made inapplicable pursuant to law.

(2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING, OPENING OF BIDS, AND LENGTH

OF CONTRACT.—Sections 6101, 6103, and 6304 of this title do not apply to the procurement of property or services made by an executive agency pursuant to this division. However, when this division is made inapplicable by any law, sections 6101 and 6103 of this title apply in the absence of authority conferred by statute to procure without advertising or without regard to section 6101 of this title. A law that authorizes an executive agency (other than an executive agency exempted from this division by this subsection) to procure property or services without advertising or without regard to section 6101 of this title is deemed to authorize the procurement pursuant to the provisions of this division relating to procedures other than sealed-bid procedures.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3742.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3101(a)	41:252(a) (words before 1st semicolon).	June 30, 1949, ch. 288, title III, §302(a), 63 Stat. 393; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85–800, §1, Aug. 28, 1958, 72 Stat. 966; Pub. L. 89–343, §1, Nov. 8, 1965, 79 Stat. 1303.
3101(b)(1)	41:252a.	June 30, 1949, ch. 288, title III, §302A, as added Pub. L. 103–355, title IV, §§4003, 4103(a), Oct. 13, 1994, 108 Stat. 3338, 3341.
3101(b)(2)	41:252b.	June 30, 1949, ch. 288, title III, §302B, as added Pub. L. 103–355, title IV, §4203(b), Oct. 13, 1994, 108 Stat. 3346.
3101(c)(1)	41:252(a) (words after 1st semicolon and before ''but when'').	
3101(c)(2)	41:252(a) (words after ''other law'').	
	41:260.	June 30, 1949, ch. 288, title III, §310, 63 Stat. 397; July 12, 1952, ch. 703, §1(m), (n), 66 Stat. 594; Pub. L. 85–800, §6, Aug. 28, 1958, 72 Stat. 967; Pub. L. 89–343, §5, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 98–369, div. B, title VII, §2714(a)(6), July 18, 1984, 98 Stat. 1185.

In subsection (c)(1)(B), the words ''except as provided in paragraph (2)'' are added for clarity. The words ''section 113(e) of title 40 or any other'' are omitted as unnecessary.

EX. ORD. NO. 13005. EMPOWERMENT CONTRACTING

Ex. Ord. No. 13005, May 21, 1996, 61 F.R. 26069, provided:

In order to promote economy and efficiency in Federal procurement, it is necessary to secure broad-based competition for Federal contracts. This broad competition is best achieved where there is an expansive pool of potential contractors capable of producing quality goods and services at competitive prices. A great and largely untapped opportunity for expanding the pool of such contractors can be found in this Nation's economically distressed communities.

Fostering growth of Federal contractors in economically distressed communities and ensuring that those contractors become viable businesses for the long term will promote economy and efficiency in Federal procurement and help to empower those communities. Fostering growth of long-term viable contractors will be promoted by offering appropriate incentives to qualified businesses.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States, including section 486(a) [now 121(a)] of title 40, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy*. The purpose of this order is to strengthen the economy and to improve the efficiency of the Federal procurement system by encouraging business development that expands the industrial base and increases competition.

SEC. 2. *Empowerment Contracting Program*. In consultation with the Secretaries of the Departments of Housing and Urban Development, Labor, and Defense; the Administrator of General Services; the Administrator of the National Aeronautics and Space Administration; the Administrator of the Small Business Administration; and the Administrator for Federal Procurement Policy, the Secretary of the Department of Commerce shall develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or an evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this order. In developing such policies and procedures, the Secretary shall consider the size of the qualified businesses.

SEC. 3. *Monitoring and Evaluation*. The Secretary shall:

(a) monitor the implementation and operation of the policies and procedures developed in accordance with this order;

(b) develop a process to ensure the proper administration of the program and to reduce the potential for fraud by the intended beneficiaries of the program;

(c) develop principles and a process to evaluate the effectiveness of the policies and procedures developed in accordance with this order; and

(d) by December 1 of each year, issue a report to the President on the status and effectiveness of the program.

SEC. 4. *Implementation Guidelines*. In implementing this order, the Secretary shall:

(a) issue rules, regulations, and guidelines necessary to implement this order, including a requirement for the periodic review of the eligibility of qualified businesses and distressed areas;

(b) draft all rules, regulations, and guidelines necessary to implement this order within 90 days of the date of this order; and

(c) ensure that all policies and procedures and all rules, regulations, and guidelines adopted and implemented in accordance with this order minimize the administrative burden on affected agencies and the procurement process.

SEC. 5. *Definitions*. For purposes of this Executive order:

(a) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(b) ''Area of general economic distress'' shall be defined, for all urban and rural communities, as any census tract that has a poverty rate of at least 20 percent or any designated Federal Empowerment Zone, Supplemental Empowerment Zone, Enhanced Enterprise Community, or Enterprise Community. In addition, the Secretary may designate as an area of general economic distress any additional rural or Indian reservation area after considering the following factors:

(1) Unemployment rate;

(2) Degree of poverty;

(3) Extent of outmigration; and

(4) Rate of business formation and rate of business growth.

(c) ''Qualified large business'' means a large for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; and (2) either has a significant physical presence in the area of general economic dis-

tress or has a direct impact on generating significant economic activity in the area of general economic distress.

(d) ''Qualified small business'' means a small for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; (2) has a significant physical presence in the area of general economic distress; or (3) has a direct impact on generating significant economic activity in the area of general economic distress.

(e) ''Secretary'' means the Secretary of Commerce.

SEC. 6. *Agency Authority*. Nothing in this Executive order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law, including specifically other programs designed to promote the development of small or disadvantaged businesses.

SEC. 7. *Judicial Review*. This Executive order 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.

EX. ORD. NO. 13627. STRENGTHENING PROTECTIONS AGAINST TRAFFICKING IN PERSONS IN FEDERAL CONTRACTS

Ex. Ord. No. 13627, Sept. 25, 2012, 77 F.R. 60029, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act (40 U.S.C. 101 et seq.) and the Trafficking Victims Protection Act of 2000, as amended (TVPA) (Public Law 106–386, Division A), and in order to strengthen protections against trafficking in persons in Federal contracting, it is hereby ordered as follows:

SECTION 1. *Policy*. More than 20 million men, women, and children throughout the world are victims of severe forms of trafficking in persons (''trafficking'' or ''trafficking in persons'')—defined in section 103 of the TVPA, 22 U.S.C. 7102(8) [now (9)], to include sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age, or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in any form of this criminal behavior. As the largest single purchaser of goods and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons. By providing our Government workforce with additional tools and training to apply and enforce existing policy, and by providing additional clarity to Government contractors and subcontractors on the steps necessary to fully comply with that policy, this order will help to protect vulnerable individuals as contractors and subcontractors perform vital services and manufacture the goods procured by the United States.

In addition, the improved safeguards provided by this order to strengthen compliance with anti-trafficking laws will promote economy and efficiency in Government procurement. These safeguards, which have been largely modeled on successful practices in the private sector, will increase stability, productivity, and certainty in Federal contracting by avoiding the disruption and disarray caused by the use of trafficked labor and resulting investigative and enforcement actions.

SEC. 2. *Anti-Trafficking Provisions*. (a) Within 180 days of the date of this order, the Federal Acquisition Regulatory (FAR) Council, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Homeland Security, the Administrator for the United States Agency for International Development, and the heads of such other executive departments and agencies (agencies) as the FAR Council determines to be appropriate, shall take steps necessary to amend the Federal Acquisition Regulation to:

(1) strengthen the efficacy of the Government's zero-tolerance policy on trafficking in persons by Federal contractors and subcontractors in solicitations, contracts, and subcontracts for supplies or services (including construction and commercial items), by:

(A) expressly prohibiting Federal contractors, contractor employees, subcontractors, and subcontractor employees from engaging in any of the following types of trafficking-related activities:

(i) using misleading or fraudulent recruitment practices during the recruitment of employees, such as failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) charging employees recruitment fees;

(iii) destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity documents, such as passports or drivers' licenses; and

(iv) for portions of contracts and subcontracts:

(I) performed outside the United States, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract;

(II) not covered by subsection (a)(1)(A)(iv)(I) of this section, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee; provided, however

(III) that the requirements of subsections (a)(1)(A)(iv)(I) and (II) shall not apply to:

(aa) an employee who is legally permitted to remain in the country of employment and who chooses to do so; or

(bb) an employee who is a victim of trafficking and is seeking victim services or legal redress in the country of employment, or an employee who is a witness in a trafficking-related enforcement action;

(v) other specific activities that the FAR Council identifies as directly supporting or promoting trafficking in persons, the procurement of commercial sex acts, or the use of forced labor in the performance of the contract or subcontract;

(B) requiring contractors and their subcontractors, by contract clause, to agree to cooperate fully in providing reasonable access to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the TVPA, this order, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(C) requiring contracting officers to notify, in accordance with agency procedures, the agency's Inspector General, the agency official responsible for initiating suspension or debarment actions, and law enforcement, if appropriate, if they become aware of any activities that would justify termination under section 106(g) of the TVPA, 22 U.S.C. 7104(g), or are inconsistent with the requirements of this order or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex

acts, or the use of forced labor, and further requiring that the agency official responsible for initiating suspension and debarment actions consider whether suspension or debarment is necessary in order to protect the Government's interest;

(2) except as provided in subsection (a)(3) of this section, ensure that provisions in solicitations and clauses in contracts and subcontracts, where the estimated value of the supplies acquired or services required to be performed outside the United States exceeds $500,000, include the following requirements pertaining to the portion of the contract or subcontract performed outside the United States:

(A) that each such contractor and subcontractor maintain a compliance plan during the performance of the contract or subcontract that is appropriate for the size and complexity of the contract or subcontract and the nature and scope of the activities performed, including the risk that the contract or subcontract will involve services or supplies susceptible to trafficking. The compliance plan shall be provided to the contracting officer upon request, and relevant contents of the plan shall be posted no later than the initiation of contract performance at the workplace and on the contractor or subcontractor's Web site (if one is maintained), and shall, at a minimum, include:

(i) an awareness program to inform employees about:

(I) the policy of ensuring that employees do not engage in trafficking in persons or related activities, including those specified in subsection (a)(1)(A) of this section, the procurement of commercial sex acts, or the use of forced labor; and

(II) the actions that will be taken against employees for violation of such policy;

(ii) a process for employees to report, without fear of retaliation, any activity that would justify termination under section 106(g) of the TVPA, or is inconsistent with the requirements of this order, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor;

(iii) a recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance;

(iv) a housing plan, if the contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host country housing and safety standards or explains any variance; and

(v) procedures to prevent subcontractors at any tier from engaging in trafficking in persons, including those trafficking-related activities described in subsection (a)(1)(A) of this section, and to monitor, detect, and terminate any subcontractors or subcontractor employees that have engaged in such activities; and

(B) that each such contractor and subcontractor shall certify, prior to receiving an award and annually thereafter during the term of the contract or subcontract, that:

(i) it has the compliance plan referred to in subsection (a)(2)(A) of this section in place to prevent trafficking-related activities described in section 106(g) of the TVPA and this order; and

(ii) either, to the best of its knowledge and belief, neither it nor any of its subcontractors has engaged in any such activities; or, if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions;

(3) specify that the requirements in subsections (a)(2)(A) and (B) of this section shall not apply with respect to contracts or subcontracts for commercially available off-the-shelf items.

(b) Not later than 1 year after the date of this order, the member agencies of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), established pursuant to section 105 of the TVPA, 22 U.S.C. 7103, shall jointly establish a process for evaluating and identifying, for Federal contracts and subcontracts performed substantially within the United States, whether there are industries or sectors with a history (or where there is current evidence) of trafficking-related or forced labor activities described in section 106(g) of the TVPA, in subsection (a)(1)(A) of this section, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Where the PITF has identified such industries or sectors, it shall notify agencies of these designations, and individual agencies shall, in consultation with the Office of Federal Procurement Policy of the Office of Management and Budget, adopt and publish appropriate safeguards, guidance, and compliance assistance to prevent trafficking and forced labor in Federal contracting in these identified areas.

SEC. 3. *Guidance and Training*. (a) The Administrator for Federal Procurement Policy shall:

(1) in consultation with appropriate management councils, such as the Chief Acquisition Officers Council, provide guidance to agencies on developing appropriate internal procedures and controls for awarding and administering Federal contracts to improve monitoring of and compliance with actions to prevent trafficking in persons, consistent with section 106 of the TVPA, including the development of methods to track the number of trafficking violations reported and remedies applied; and

(2) in consultation with the Federal Acquisition Institute and appropriate management councils, such as the Chief Acquisition Officers Council:

(A) develop methods to track the number of Federal employees trained; and

(B) implement training requirements to ensure that the Federal acquisition workforce is trained on the policies and responsibilities for combating trafficking, including on:

(i) applicable laws, regulations, and policies; and

(ii) internal controls and oversight procedures implemented by the agency, including enforcement procedures available to the agency to investigate, manage, and mitigate contractor and subcontractor trafficking violations.

(b) The member agencies of PITF shall jointly facilitate the sharing of information that may be used by acquisition, program, and other offices within agencies to evaluate where the risk of trafficking in persons may be heightened based on the nature of the work to be performed, the place of performance, and any other relevant considerations.

SEC. 4. *Effective Date*. This order shall become effective immediately and shall apply to solicitations issued on or after the effective date for the action taken by the FAR Council under subsection 2(a) of this order.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13673. FAIR PAY AND SAFE WORKPLACES

Ex. Ord. No. 13673, July 31, 2014, 79 F.R. 45309, as amended by Ex. Ord. No. 13683, §3, Dec. 11, 2014, 79 F.R. 75042, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of

America, including 40 U.S.C. 121, and in order to promote economy and efficiency in procurement by contracting with responsible sources who comply with labor laws, it is hereby ordered as follows:

SECTION 1. *Policy*. This order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws. Labor laws are designed to promote safe, healthy, fair, and effective workplaces. Contractors that consistently adhere to labor laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely, predictable, and satisfactory delivery of goods and services to the Federal Government. Helping executive departments and agencies (agencies) to identify and work with contractors with track records of compliance will reduce execution delays and avoid distractions and complications that arise from contracting with contractors with track records of noncompliance.

SEC. 2. *Compliance with Labor Laws*. (a) Pre-award Actions. (i) For procurement contracts for goods and services, including construction, where the estimated value of the supplies acquired and services required exceeds $500,000, each agency shall ensure that provisions in solicitations require that the offeror represent, to the best of the offeror's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judgment, as defined in guidance issued by the Department of Labor, rendered against the offeror within the preceding 3-year period for violations of any of the following labor laws and Executive Orders (labor laws):

(A) the Fair Labor Standards Act;

(B) the Occupational Safety and Health Act of 1970;

(C) the Migrant and Seasonal Agricultural Worker Protection Act;

(D) the National Labor Relations Act;

(E) 40 U.S.C. chapter 31, subchapter IV, also known as the Davis-Bacon Act;

(F) 41 U.S.C. chapter 67, also known as the Service Contract Act;

(G) Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity);

(H) section 503 of the Rehabilitation Act of 1973;

(I) the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974;

(J) the Family and Medical Leave Act;

(K) title VII of the Civil Rights Act of 1964;

(L) the Americans with Disabilities Act of 1990;

(M) the Age Discrimination in Employment Act of 1967;

(N) Executive Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors); or

(O) equivalent State laws, as defined in guidance issued by the Department of Labor.

(ii) A contracting officer, prior to making an award, shall, as part of the responsibility determination, provide an offeror with a disclosure pursuant to section 2(a)(i) of this order an opportunity to disclose any steps taken to correct the violations of or improve compliance with the labor laws listed in paragraph (i) of this subsection, including any agreements entered into with an enforcement agency. The agency's Labor Compliance Advisor, as defined in section 3 of this order, in consultation with relevant enforcement agencies, shall advise the contracting officer whether agreements are in place or are otherwise needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further violations, or other related matters.

(iii) In consultation with the agency's Labor Compliance Advisor, contracting officers shall consider the information provided pursuant to paragraphs (i) and (ii) of this subsection in determining whether an offeror is a responsible source that has a satisfactory record of integrity and business ethics, after reviewing the guidelines set forth by the Department of Labor and consistent with any final rules issued by the Federal Acquisition Regulatory (FAR) Council pursuant to section 4 of this order.

(iv) For any subcontract where the estimated value of the supplies acquired and services required exceeds $500,000 and that is not for commercially available off-the-shelf items, a contracting officer shall require that, at the time of execution of the contract, a contractor represents to the contracting agency that the contractor:

(A) will require each subcontractor to disclose any administrative merits determination, arbitral award or decision, or civil judgment rendered against the subcontractor within the preceding 3-year period for violations of any of the requirements of the labor laws listed in paragraph (i) of this subsection, and update the information every 6 months; and

(B) before awarding a subcontract, will consider the information submitted by the subcontractor pursuant to subparagraph (A) of this paragraph in determining whether a subcontractor is a responsible source that has a satisfactory record of integrity and business ethics, except for subcontracts that are awarded or become effective within 5 days of contract execution, in which case the information may be reviewed within 30 days of subcontract award.

(v) A contracting officer shall require that a contractor incorporate into subcontracts covered by paragraph (iv) of this subsection a requirement that the subcontractor disclose to the contractor any administrative merits determination, arbitral award or decision, or civil judgment rendered against the subcontractor within the preceding 3-year period for violations of any of the requirements of the labor laws listed in paragraph (i) of this subsection.

(vi) A contracting officer, Labor Compliance Advisor, and the Department of Labor (or other relevant enforcement agency) shall be available, as appropriate, for consultation with a contractor to assist in evaluating the information on labor compliance submitted by a subcontractor pursuant to paragraph (v) of this subsection.

(vii) As appropriate, contracting officers in consultation with the Labor Compliance Advisor shall refer matters related to information provided pursuant to paragraphs (i) and (iv) of this subsection to the agency suspending and debarring official in accordance with agency procedures.

(b) Post-award Actions. (i) During the performance of the contract, each agency shall require that every 6 months contractors subject to this order update the information provided pursuant to subsection (a)(i) of this section and obtain the information required pursuant to subsection (a)(v) of this section for covered subcontracts.

(ii) If information regarding violations of labor laws is brought to the attention of a contracting officer pursuant to paragraph (i) of this subsection, or similar information is obtained through other sources, a contracting officer shall consider whether action is necessary in consultation with the agency's Labor Compliance Advisor. Such action may include agreements requiring appropriate remedial measures, compliance assistance, and resolving issues to avoid further violations, as well as remedies such as decisions not to exercise an option on a contract, contract termination, or referral to the agency suspending and debarring official.

(iii) A contracting officer shall require that if information regarding violations of labor laws by a contractor's subcontractor is brought to the attention of the contractor pursuant to subsections [sic] (a)(iv), (v) or (b)(i) of this section or similar information is obtained through other sources, then the contractor shall consider whether action is necessary. A contracting officer, Labor Compliance Advisor, and the Department of Labor shall be available for consultation with a contractor regarding appropriate steps it should consider. Such action may include appropriate remedial measures, compliance assistance, and resolving issues to avoid further violations.

(iv) The Department of Labor shall, as appropriate, inform contracting agencies of its investigations of contractors and subcontractors on current Federal contracts so that the agency can help the contractor determine the best means to address any issues, including compliance assistance and resolving issues to avoid or prevent violations.

(v) As appropriate, contracting officers in consultation with the Labor Compliance Advisor shall send information provided pursuant to paragraphs (i)–(iii) of this subsection to the agency suspending and debarring official in accordance with agency procedures.

SEC. 3. *Labor Compliance Advisors*. Each agency shall designate a senior agency official to be a Labor Compliance Advisor, who shall:

(a) meet quarterly with the Deputy Secretary, Deputy Administrator, or equivalent agency official with regard to matters covered by this order;

(b) work with the acquisition workforce, agency officials, and agency contractors to promote greater awareness and understanding of labor law requirements, including recordkeeping, reporting, and notice requirements, as well as best practices for obtaining compliance with these requirements;

(c) coordinate assistance for agency contractors seeking help in addressing and preventing labor violations;

(d) in consultation with the Department of Labor or other relevant enforcement agencies, and pursuant to section 4(b)(ii) of this order as necessary, provide assistance to contracting officers regarding appropriate actions to be taken in response to violations identified prior to or after contracts are awarded, and address complaints in a timely manner, by:

(i) providing assistance to contracting officers and other agency officials in reviewing the information provided pursuant to sections 2(a)(i), (ii), and (v) and 2(b)(i), (ii), and (iii) of this order, or other information indicating a violation of a labor law, so as to assess the serious, repeated, willful, or pervasive nature of any violation and evaluate steps contractors have taken to correct violations or improve compliance with relevant requirements;

(ii) helping agency officials determine the appropriate response to address violations of the requirements of the labor laws listed in section 2(a)(i) of this order or other information indicating such a labor violation (particularly serious, repeated, willful, or pervasive violations), including agreements requiring appropriate remedial measures, decisions not to award a contract or exercise an option on a contract, contract termination, or referral to the agency suspending and debarring official;

(iii) providing assistance to appropriate agency officials in receiving and responding to, or making referrals of, complaints alleging violations by agency contractors and subcontractors of the requirements of the labor laws listed in section 2(a)(i) of this order; and

(iv) supporting contracting officers, suspending and debarring officials, and other agency officials in the coordination of actions taken pursuant to this subsection to ensure agency-wide consistency, to the extent practicable;

(e) as appropriate, send information to agency suspending and debarring officials in accordance with agency procedures;

(f) consult with the agency's Chief Acquisition Officer and Senior Procurement Executive, and the Department of Labor as necessary, in the development of regulations, policies, and guidance addressing labor law compliance by contractors and subcontractors;

(g) make recommendations to the agency to strengthen agency management of contractor compliance with labor laws;

(h) publicly report, on an annual basis, a summary of agency actions taken to promote greater labor compliance, including the agency's response pursuant to this order to serious, repeated, willful, or pervasive violations of the requirements of the labor laws listed in section 2(a)(i) of this order; and

(i) participate in the interagency meetings regularly convened by the Secretary of Labor pursuant to section 4(b)(iv) of this order.

SEC. 4. *Ensuring Government-wide Consistency*. In order to facilitate Government-wide consistency in implementing the requirements of this order:

(a) to the extent permitted by law, the FAR Council shall, in consultation with the Department of Labor, the Office of Management and Budget, relevant enforcement agencies, and contracting agencies, propose to amend the Federal Acquisition Regulation to identify considerations for determining whether serious, repeated, willful, or pervasive violations of the labor laws listed in section 2(a)(i) of this order demonstrate a lack of integrity or business ethics. Such considerations shall apply to the integrity and business ethics determinations made by both contracting officers and contractors pursuant to this order. In addition, such proposed regulations shall:

(i) provide that, subject to the determination of the agency, in most cases a single violation of law may not necessarily give rise to a determination of lack of responsibility, depending on the nature of the violation;

(ii) ensure appropriate consideration is given to any remedial measures or mitigating factors, including any agreements by contractors or other corrective action taken to address violations; and

(iii) ensure that contracting officers and Labor Compliance Advisors send information, as appropriate, to the agency suspending and debarring official, in accordance with agency procedures.

(b) the Secretary of Labor shall:

(i) develop guidance, in consultation with the agencies responsible for enforcing the requirements of the labor laws listed in section 2(a)(i) of this order, to assist agencies in determining whether administrative merits determinations, arbitral awards or decisions, or civil judgments were issued for serious, repeated, willful, or pervasive violations of these requirements for purposes of implementation of any final rule issued by the FAR Council pursuant to this order. Such guidance shall:

(A) where available, incorporate existing statutory standards for assessing whether a violation is serious, repeated, or willful; and

(B) where no statutory standards exist, develop standards that take into account:

(1) for determining whether a violation is ''serious'' in nature, the number of employees affected, the degree of risk posed or actual harm done by the violation to the health, safety, or well-being of a worker, the amount of damages incurred or fines or penalties assessed with regard to the violation, and other considerations as the Secretary finds appropriate;

(2) for determining whether a violation is ''repeated'' in nature, whether the entity has had one or more additional violations of the same or a substantially similar requirement in the past 3 years;

(3) for determining whether a violation is ''willful'' in nature, whether the entity knew of, showed reckless disregard for, or acted with plain indifference to the matter of whether its conduct was prohibited by the requirements of the labor laws listed in section 2(a)(i) of this order; and

(4) for determining whether a violation is ''pervasive'' in nature, the number of violations of a requirement or the aggregate number of violations of requirements in relation to the size of the entity;

(ii) develop processes:

(A) for Labor Compliance Advisors to consult with the Department of Labor in carrying out their responsibilities under section 3(d) of this order;

(B) by which contracting officers and Labor Compliance Advisors may give appropriate consideration to determinations and agreements made by the Department of Labor and other agencies; and

(C) by which contractors may enter into agreements with the Department of Labor or other enforcement agency prior to being considered for contracts.

(iii) review data collection requirements and processes, and work with the Director of the Office of Management and Budget, the Administrator for General

Services, and other agency heads to improve those processes and existing data collection systems, as necessary, to reduce the burden on contractors and increase the amount of information available to agencies;

(iv) regularly convene interagency meetings of Labor Compliance Advisors to share and promote best practices for improving labor law compliance; and

(v) designate an appropriate contact for agencies seeking to consult with the Department of Labor pursuant to this order;

(c) the Director of the Office of Management and Budget shall:

(i) work with the Administrator of General Services to include in the Federal Awardee Performance and Integrity Information System information provided by contractors pursuant to sections 2(a)(i) and (ii) and 2(b)(i) of this order, and data on the resolution of any issues related to such information; and

(ii) designate an appropriate contact for agencies seeking to consult with the Office of Management and Budget pursuant to this order;

(d) the Administrator of General Services, in consultation with other relevant agencies, shall develop a single Web site for Federal contractors to use for all Federal contract reporting requirements related to this order, as well as any other Federal contract reporting requirements to the extent practicable;

(e) in developing the guidance pursuant to subsection (b) of this section and proposing to amend the Federal Acquisition Regulation pursuant to subsection (a) of this section, the Secretary of Labor and the FAR Council, respectively, shall minimize, to the extent practicable, the burden of complying with this order for Federal contractors and subcontractors and in particular small entities, including small businesses, as defined in section 3 of the Small Business Act (15 U.S.C. 632), and small nonprofit organizations; and

(f) agencies shall provide the Administrator of General Services with the necessary data to develop the Web site described in subsection (d) of this section.

SEC. 5. *Paycheck Transparency*. (a) Agencies shall ensure that, for contracts subject to section 2 of this order, provisions in solicitations and clauses in contracts shall provide that, in each pay period, contractors provide all individuals performing work under the contract for whom they are required to maintain wage records under the Fair Labor Standards Act; 40 U.S.C. chapter 31, subchapter IV (also known as the Davis-Bacon Act); 41 U.S.C. chapter 67 (also known as the Service Contract Act); or equivalent State laws, with a document with information concerning that individual's hours worked, overtime hours, pay, and any additions made to or deductions made from pay. Agencies shall also require that contractors incorporate this same requirement into subcontracts covered by section 2 of this order. The document provided to individuals exempt from the overtime compensation requirements of the Fair Labor Standards Act need not include a record of hours worked if the contractor informs the individuals of their overtime exempt status. These requirements shall be deemed to be fulfilled if the contractor is complying with State or local requirements that the Secretary of Labor has determined are substantially similar to those required by this subsection.

(b) If the contractor is treating an individual performing work under a contract or subcontract subject to subsection (a) of this section as an independent contractor, and not an employee, the contractor must provide a document informing the individual of this status.

SEC. 6. *Complaint and Dispute Transparency*. (a) Agencies shall ensure that for all contracts where the estimated value of the supplies acquired and services required exceeds $1 million, provisions in solicitations and clauses in contracts shall provide that contractors agree that the decision to arbitrate claims arising under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment may only be made with the voluntary consent of employees or independent contractors after such disputes arise. Agencies shall also require that contractors incorporate this same requirement into subcontracts where the estimated value of the supplies acquired and services required exceeds $1 million.

(b) Subsection (a) of this section shall not apply to contracts or subcontracts for the acquisition of commercial items or commercially available off-the-shelf items.

(c) A contractor's or subcontractor's agreement under subsection (a) of this section to arbitrate certain claims only with the voluntary post-dispute consent of employees or independent contractors shall not apply with respect to:

(i) employees who are covered by any type of collective bargaining agreement negotiated between the contractor and a labor organization representing them; or

(ii) employees or independent contractors who entered into a valid contract to arbitrate prior to the contractor or subcontractor bidding on a contract covered by this order, except that a contractor's or subcontractor's agreement under subsection (a) of this section to arbitrate certain claims only with the voluntary post-dispute consent of employees or independent contractors shall apply if the contractor or subcontractor is permitted to change the terms of the contract with the employee or independent contractor, or when the contract is renegotiated or replaced.

SEC. 7. *Implementing Regulations*. In addition to proposing to amend the Federal Acquisition Regulation as required by section 4(a) of this order, the FAR Council shall propose such rules and regulations and issue such orders as are deemed necessary and appropriate to carry out this order, including sections 5 and 6, and shall issue final regulations in a timely fashion after considering all public comments, as appropriate.

SEC. 8. *Severability*. If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 10. *Effective Date*. This order shall become effective immediately and shall apply to all solicitations for contracts as set forth in any final rule issued by the FAR Council under sections 4(a) and 7 of this order.

BARACK OBAMA.

GOVERNMENT CONTRACTING

Memorandum of President of the United States, Mar. 4, 2009, 74 F.R. 9755, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers.

Since 2001, spending on Government contracts has more than doubled, reaching over $500 billion in 2008. During this same period, there has been a significant increase in the dollars awarded without full and open competition and an increase in the dollars obligated through cost-reimbursement contracts. Between fiscal years 2000 and 2008, for example, dollars obligated under cost-reimbursement contracts nearly doubled, from $71 billion in 2000 to $135 billion in 2008. Reversing these

trends away from full and open competition and toward cost-reimbursement contracts could result in savings of billions of dollars each year for the American taxpayer.

Excessive reliance by executive agencies on sole-source contracts (or contracts with a limited number of sources) and cost-reimbursement contracts creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer. Reports by agency Inspectors General, the Government Accountability Office (GAO), and other independent reviewing bodies have shown that noncompetitive and cost-reimbursement contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results.

When awarding Government contracts, the Federal Government must strive for an open and competitive process. However, executive agencies must have the flexibility to tailor contracts to carry out their missions and achieve the policy goals of the Government. In certain exigent circumstances, agencies may need to consider whether a competitive process will not accomplish the agency's mission. In such cases, the agency must ensure that the risks associated with noncompetitive contracts are minimized.

Moreover, it is essential that the Federal Government have the capacity to carry out robust and thorough management and oversight of its contracts in order to achieve programmatic goals, avoid significant overcharges, and curb wasteful spending. A GAO study last year of 95 major defense acquisitions projects found cost overruns of 26 percent, totaling $295 billion over the life of the projects. Improved contract oversight could reduce such sums significantly.

Government outsourcing for services also raises special concerns. For decades, the Federal Government has relied on the private sector for necessary commercial services used by the Government, such as transportation, food, and maintenance. Office of Management and Budget Circular A–76, first issued in 1966, was based on the reasonable premise that while inherently governmental activities should be performed by Government employees, taxpayers may receive more value for their dollars if non-inherently governmental activities that can be provided commercially are subject to the forces of competition.

However, the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined. As a result, contractors may be performing inherently governmental functions. Agencies and departments must operate under clear rules prescribing when outsourcing is and is not appropriate.

It is the policy of the Federal Government that executive agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer. In addition, there shall be a preference for fixed-price type contracts. Cost-reimbursement contracts shall be used only when circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract. Moreover, the Federal Government shall ensure that taxpayer dollars are not spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the Federal Government's needs and to manage the risk associated with the goods and services being procured. The Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure that taxpayer funds are spent wisely and are not subject to excessive risk. Finally, the Federal Government must ensure that those functions that are inherently governmental in nature are performed by executive agencies and are not outsourced.

I hereby direct the Director of the Office of Management and Budget (OMB), in collaboration with the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Administrator of General Services, the Director of the Office of Personnel Management, and the heads of such other agencies as the Director of OMB determines to be appropriate, and with the participation of appropriate management councils and program management officials, to develop and issue by July 1, 2009, Government-wide guidance to assist agencies in reviewing, and creating processes for ongoing review of, existing contracts in order to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency's needs, and to formulate appropriate corrective action in a timely manner. Such corrective action may include modifying or canceling such contracts in a manner and to the extent consistent with applicable laws, regulations, and policy.

I further direct the Director of OMB, in collaboration with the aforementioned officials and councils, and with input from the public, to develop and issue by September 30, 2009, Government-wide guidance to:

(1) govern the appropriate use and oversight of sole-source and other types of noncompetitive contracts and to maximize the use of full and open competition and other competitive procurement processes;

(2) govern the appropriate use and oversight of all contract types, in full consideration of the agency's needs, and to minimize risk and maximize the value of Government contracts generally, consistent with the regulations to be promulgated pursuant to section 864 of Public Law 110–417;

(3) assist agencies in assessing the capacity and ability of the Federal acquisition workforce to develop, manage, and oversee acquisitions appropriately; and

(4) clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110–417 (31 U.S.C. 501 note).

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 3102. Delegation and assignment of powers, functions, and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another law, the head of an executive agency may delegate to another officer or official of that agency any power under this division.

(b) PROCUREMENTS FOR OR WITH ANOTHER AGENCY.—Subject to subsection (a), to facilitate the procurement of property and services covered by this division by an executive agency for another executive agency, and to facilitate joint procurement by executive agencies—

(1) the head of an executive agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within the agency;

(2) the heads of 2 or more executive agencies, consistent with section 1535 of title 31 and regulations prescribed under section 1074 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 31 U.S.C. 1535 note), may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian em-

ployee of another of those executive agencies; and

(3) the heads of 2 or more executive agencies may establish joint or combined offices to exercise procurement functions and responsibilities.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3743.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3102	41:261.	June 30, 1949, ch. 288, title III, § 311, as added Pub. L. 103–355, title I, § 1552, Oct. 13, 1994, 108 Stat. 3299.

§ 3103. Acquisition programs

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost, performance, and schedule goals established for major acquisition programs of the agency.

(b) ESTABLISHMENT OF GOALS.—

(1) BY HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

(2) BY CHIEF FINANCIAL OFFICER.—The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major acquisition program of the agency.

(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—When it is necessary to implement the policy set out in subsection (a), the head of an executive agency shall—

(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

(2) identify suitable actions to be taken, including termination, with respect to those programs.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3743.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3103	41:263.	June 30, 1949, ch. 288, title III, § 313, as added Pub. L. 103–355, title V, § 5051(a), Oct. 13, 1994, 108 Stat. 3351; Pub. L. 105–85, div. A, title VIII, § 851(a), Nov. 18, 1997, 111 Stat. 1851.

§ 3104. Small business concerns

It is the policy of Congress that a fair proportion of the total purchases and contracts for property and services for the Federal Government shall be placed with small business concerns.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3744.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3104	41:252(b).	June 30, 1949, ch. 288, title III, § 302(b), 63 Stat. 393; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 98–369, div. B, title VII, § 2714(a)(1)(A), July 18, 1984, 98 Stat. 1184.

The word ''declared'' is omitted as unnecessary.

§ 3105. New contracts and grants and merit-based selection procedures

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

(1) an executive agency should not be required by legislation to award—

(A) a new contract to a specific non-Federal Government entity; or

(B) a new grant for research, development, test, or evaluation to a non-Federal Government entity; and

(2) a program, project, or technology identified in legislation be procured or awarded through merit-based selection procedures.

(b) NEW CONTRACT AND NEW GRANT DESCRIBED.—For purposes of this section—

(1) a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a prior contract; and

(2) a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a prior grant.

(c) REQUIREMENTS FOR AWARDING NEW CONTRACT OR NEW GRANT.—A provision of law may not be construed as requiring a new contract or a new grant to be awarded to a specified non-Federal Government entity unless the provision of law specifically—

(1) refers to this section;

(2) identifies the particular non-Federal Government entity involved; and

(3) states that the award to that entity is required by the provision of law in contravention of the policy set forth in subsection (a).

(d) EXCEPTION.—This section does not apply to a contract or grant that calls on the National Academy of Sciences to investigate, examine, or experiment on a subject of science or art of significance to an executive agency and to report on those matters to Congress or an agency of the Federal Government.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3744.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3105(a)	41:253(i)(1).	June 30, 1949, ch. 288, title III, § 303(i), as added Pub. L. 103–355, title VII, § 7203(b)(1)(B), Oct. 13, 1994, 108 Stat. 3380; Pub. L. 104–106, title XLI, § 4101(b)(1), Feb. 10, 1996, 110 Stat. 642.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	41:266(a).	June 30, 1949, ch. 288, title III, § 316, as added Pub. L. 103–355, title VII, § 7203(b)(2), Oct. 13, 1994, 108 Stat. 3381; Pub. L. 104–106, title XLIII, § 4321(e)(9), Feb. 10, 1996, 110 Stat. 675.
3105(b)	41:253(i)(3). 41:266(c).	
3105(c)	41:253(i)(2). 41:266(b).	
3105(d)	41:253(i)(4). 41:266(d).	

§ 3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division

This division does not—

(1) authorize the erection, repair, or furnishing of a public building or public improvement; or

(2) permit a contract for the construction or repair of a building, road, sidewalk, sewer, main, or similar item using procedures other than sealed-bid procedures under section 3301(b)(1)(A) of this title if the conditions set forth in section 3301(b)(1)(A) of this title apply or the contract is to be performed outside the United States.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3745.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3106	41:252(c)(1).	June 30, 1949, ch. 288, title III, § 302(c)(1), 63 Stat. 393; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85–800, §§ 2, 3, Aug. 28, 1958, 72 Stat. 966; Pub. L. 89–343, § 2, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 89–348, § 1(2), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 90–268, § 4, Mar. 16, 1968, 82 Stat. 50; Pub. L. 93–356, § 3, July 25, 1974, 88 Stat. 390; Pub. L. 98–191, § 9(a)(1), Dec. 1, 1983, 97 Stat. 1331; Pub. L. 98–369, div. B, title VII, § 2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.

In paragraph (1), the words ''but such authorization shall be required in the same manner as heretofore'' are omitted as unnecessary.

CHAPTER 33—PLANNING AND SOLICITATION

Sec.
3301. Full and open competition.
3302. Requirements for purchase of property and services pursuant to multiple award contracts.
3303. Exclusion of particular source or restriction of solicitation to small business concerns.
3304. Use of noncompetitive procedures.
3305. Simplified procedures for small purchases.
3306. Planning and solicitation requirements.
3307. Preference for commercial items.
3308. Planning for future competition in contracts for major systems.
3309. Design-build selection procedures.
3310. Quantities to order.
3311. Qualification requirement.
3312. Database on price trends of items and services under Federal contracts.

AMENDMENTS

2013—Pub. L. 112–239, div. A, title VIII, § 851(a)(2), Jan. 2, 2013, 126 Stat. 1855, added item 3312.

§ 3301. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and 3305 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services shall—

(1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and

(2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) APPROPRIATE COMPETITIVE PROCEDURES.—

(1) USE OF SEALED BIDS.—In determining the competitive procedures appropriate under the circumstance, an executive agency shall—

(A) solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A).

(2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not require the use of sealed-bid procedures in cases in which section 204(e)[1] of title 23 applies.

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government's requirements.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3745.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3301(a)	41:253(a)(1).	June 30, 1949, ch. 288, title III, § 303(a), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 90–268, § 2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, title VII, § 2711(a)(1), July 18, 1984, 98 Stat. 1175; Pub. L. 103–355, title I, § 1051(1), Oct. 13, 1994, 108 Stat. 3260.
3301(b)(1)	41:253(a)(2).	
3301(b)(2)	41:252(c)(2).	June 30, 1949, ch. 288, title III, § 302(c)(2), as added Pub. L. 98–369, title VII, § 2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.
3301(c)	41:253(h).	June 30, 1949, ch. 288, title III, § 303(h), as added Pub. L. 104–106, title XLI, § 4101(b)(2), Feb. 10, 1996, 110 Stat. 642.

[1] See References in Text note below.

REFERENCES IN TEXT

Section 204 of title 23, referred to in subsec. (b)(2), was repealed and a new section 204 enacted by Pub. L. 112–141, div. A, title I, § 1119(a), July 6, 2012, 126 Stat. 473, 489.

REGULATIONS

Pub. L. 113–291, div. A, title VIII, § 836, Dec. 19, 2014, 128 Stat. 3449, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Administrator for Federal Procurement Policy shall prescribe regulations providing that when the Federal Government makes a purchase of services and supplies offered under the Federal Strategic Sourcing Initiative (managed by the Office of Federal Procurement Policy) but such Initiative is not used, the contract file for the purchase shall include a brief analysis of the comparative value, including price and nonprice factors, between the services and supplies offered under such Initiative and services and supplies offered under the source or sources used for the purchase.''

CONSTRUCTION

Pub. L. 98–369, div. B, title VII, § 2711(c), July 18, 1984, 98 Stat. 1181, provided that: ''The amendments made by this section [see Tables for classification] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).''

GOVERNMENTWIDE SOFTWARE PURCHASING PROGRAM

Pub. L. 113–291, div. A, title VIII, § 837, Dec. 19, 2014, 128 Stat. 3450, provided that:

''(a) IN GENERAL.—The Administrator of General Services shall identify and develop a strategic sourcing initiative to enhance Governmentwide acquisition, shared use, and dissemination of software, as well as compliance with end user license agreements.

''(b) GOVERNMENTWIDE USER LICENSE AGREEMENT.—The Administrator, in developing the initiative under subsection (a), shall allow for the purchase of a license agreement that is available for use by all Executive agencies (as defined in section 105 of title 5, United States Code) as one user to the maximum extent practicable and as appropriate.''

§ 3302. Requirements for purchase of property and services pursuant to multiple award contracts

(a) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.— The term ''executive agency'' has the same meaning given in section 133 of this title.

(2) INDIVIDUAL PURCHASE.—The term ''individual purchase'' means a task order, delivery order, or other purchase.

(3) MULTIPLE AWARD CONTRACT.—The term ''multiple award contract'' means—

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10;

(B) a multiple award task order contract that is entered into under the authority of sections 2304a to 2304d of title 10, or chapter 41 of this title; and

(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of an executive agency with 2 or more sources pursuant to the same solicitation.

(4) SOLE SOURCE TASK OR DELIVERY ORDER.—The term ''sole source task or delivery order'' means any order that does not follow the competitive procedures in paragraph (2) or (3) of subsection (c).

(b) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple award contracts.

(c) CONTENT OF REGULATIONS.—

(1) IN GENERAL.—The regulations required by subsection (b) shall provide that each individual purchase of property or services in excess of the simplified acquisition threshold that is made under a multiple award contract shall be made on a competitive basis unless a contracting officer—

(A) waives the requirement on the basis of a determination that—

(i) one of the circumstances described in paragraphs (1) to (4) of section 4106(c) of this title or section 2304c(b) of title 10 applies to the individual purchase; or

(ii) a law expressly authorizes or requires that the purchase be made from a specified source; and

(B) justifies the determination in writing.

(2) COMPETITIVE BASIS PROCEDURES.—For purposes of this subsection, an individual purchase of property or services is made on a competitive basis only if it is made pursuant to procedures that—

(A) require fair notice of the intent to make that purchase (including a description of the work to be performed and the basis on which the selection will be made) to be provided to all contractors offering the property or services under the multiple award contract; and

(B) afford all contractors responding to the notice a fair opportunity to make an offer and have that offer fairly considered by the official making the purchase.

(3) EXCEPTION TO NOTICE REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), and subject to subparagraph (B), notice may be provided to fewer than all contractors offering the property or services under a multiple award contract as described in subsection (a)(3)(A) if notice is provided to as many contractors as practicable.

(B) LIMITATION ON EXCEPTION.—A purchase may not be made pursuant to a notice that is provided to fewer than all contractors under subparagraph (A) unless—

(i) offers were received from at least 3 qualified contractors; or

(ii) a contracting officer of the executive agency determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

(d) PUBLIC NOTICE REQUIREMENTS RELATED TO SOLE SOURCE TASK OR DELIVERY ORDERS.—

(1) PUBLIC NOTICE REQUIRED.—The Federal Acquisition Regulation shall require the head of each executive agency to—

(A) publish on FedBizOpps notice of all sole source task or delivery orders in excess of the simplified acquisition threshold that are placed against multiple award contracts not later than 14 days after the orders are

placed, except in the event of extraordinary circumstances or classified orders; and

(B) disclose the determination required by subsection (c)(1) related to sole source task or delivery orders in excess of the simplified acquisition threshold placed against multiple award contracts through the same mechanism and to the same extent as the disclosure of documents containing a justification and approval required by section 2304(f)(1) of title 10 and section 3304(e)(1) of this title, except in the event of extraordinary circumstances or classified orders.

(2) EXEMPTION.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(e) APPLICABILITY.—The regulations required by subsection (b) shall apply to all individual purchases of property or services that are made under multiple award contracts on or after the effective date of the regulations, without regard to whether the multiple award contracts were entered into before, on, or after the effective date.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3746; Pub. L. 111–383, div. A, title X, § 1075(e)(14), Jan. 7, 2011, 124 Stat. 4375.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from Pub. L. 110–417, [div. A], title VIII, § 863(a)–(e), Oct. 14, 2008, 122 Stat. 4547, which was set out as a note under section 253h of former Title 41, Public Contracts, prior to being repealed and reenacted by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 863(b)(3)(A) of Pub. L. 110–417 was restated as subsec. (c)(3)(A) of this section and subsequently amended by Pub. L. 111–383, div. A, title X, § 1075(e)(14), Jan. 7, 2011, 124 Stat. 4375. For applicability of that amendment to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 863(b)(3)(A) of Pub. L. 110–417 was amended by striking ''subsection (d)(2)(A)'' and inserting ''subsection (d)(3)(A)''. Such reference did not appear in the text of subsec. (c)(3)(A) as enacted. See Historical and Revision Notes below.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3302	41:253h note.	Pub. L. 110–417, [div. A], title VIII, § 863(a)–(e), Oct. 14, 2008, 122 Stat. 4547.

In subsection (b), the words ''Not later than one year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The words ''shall require'' are substituted for ''shall be amended to require'' to reflect the permanence of the provision.

In subsection (c)(2)(A), the words ''except as provided in paragraph (3)'' are omitted as unnecessary.

In subsection (c)(3)(A), ''subsection (a)(3)(A)'' is substituted for ''subsection (d)(2)(A)'' for consistency in the revised title and to correct an error in the law.

In subsection (d)(1), the words ''Not later than one year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The words ''shall require'' are substituted for ''shall be amended to require'' to reflect the permanence of the provision.

§ 3303. Exclusion of particular source or restriction of solicitation to small business concerns

(a) EXCLUSION OF PARTICULAR SOURCE.—

(1) CRITERIA FOR EXCLUSION.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures but excluding a particular source to establish or maintain an alternative source of supply for that property or service if the agency head determines that to do so would—

(A) increase or maintain competition and likely result in reduced overall cost for the procurement, or for an anticipated procurement, of the property or services;

(B) be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(D) ensure the continuous availability of a reliable source of supply of the property or service;

(E) satisfy projected needs for the property or service determined on the basis of a history of high demand for the property or service; or

(F) satisfy a critical need for medical, safety, or emergency supplies.

(2) DETERMINATION FOR CLASS DISALLOWED.—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIREMENTS.—A contract awarded pursuant to the competitive procedures referred to in subsections (a) and (b) is not subject to the justification and approval required by section 3304(e)(1) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3747.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3303	41:253(b).	June 30, 1949, ch. 288, title III, § 303(b), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 90–268, § 2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, title VII, § 2711(a)(1), July 18, 1984, 98 Stat. 1175; Pub. L. 98–577, title V, § 504(a)(1), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103–355, title I, § 1052, Oct. 13, 1994, 108 Stat. 3260.

§ 3304. Use of noncompetitive procedures

(a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An executive agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

(2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Federal Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source—

(A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization;

(B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before a court, administrative tribunal, or agency, whether or not the expert is expected to testify; or

(D) to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or treaty between the Federal Government and a foreign government or an international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for that government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to section 3105 of this title, a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the executive agency (who may not delegate the authority under this paragraph)—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned; and

(B) notifies Congress in writing of that determination not less than 30 days before the award of the contract.

(b) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE SOURCE.—For the purposes of subsection (a)(1), in the case of—

(1) a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services are deemed to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which is not otherwise available to the Federal Government and does not resemble the substance of a pending competitive procurement; or

(2) a follow-on contract for the continued development or production of a major system or highly specialized equipment, the property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(A) substantial duplication of cost to the Federal Government that is not expected to be recovered through competition; or

(B) unacceptable delay in fulfilling the executive agency's needs.

(c) PROPERTY OR SERVICES NEEDED WITH UNUSUAL AND COMPELLING URGENCY.—

(1) ALLOWABLE CONTRACT PERIOD.—The contract period of a contract described in paragraph (2) that is entered into by an executive agency pursuant to the authority provided under subsection (a)(2)—

(A) may not exceed the time necessary—

(i) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(B) may not exceed one year unless the head of the executive agency entering into the contract determines that exceptional circumstances apply.

(2) APPLICABILITY OF ALLOWABLE CONTRACT PERIOD.—This subsection applies to any contract in an amount greater than the simplified acquisition threshold.

(d) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of paragraph (2) or (6) of subsection (a) shall request offers from as many potential sources as is practicable under the circumstances.

(e) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

(1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided in paragraphs (3) and (4), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of those procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved, in the case of a contract for an amount—

(i) exceeding $500,000 but equal to or less than $10,000,000, by the advocate for competition for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) exceeding $10,000,000 but equal to or less than $50,000,000, by the head of the procuring activity or by a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in which the individual is entitled to receive the daily equivalent of the maximum annual rate of basic pay payable for level IV of the Executive Schedule (or in a comparable or higher position under another schedule); or

(iii) exceeding $50,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of this title (without further delegation); and

(C) any required notice has been published with respect to the contract pursuant to section 1708 of this title and the executive agency has considered all bids or proposals received in response to that notice.

(2) ELEMENTS OF JUSTIFICATION.—The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of any sources that expressed in writing an interest in the procurement; and

(F) a statement of any actions the agency may take to remove or overcome a barrier to competition before a subsequent procurement for those needs.

(3) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the case of a procurement permitted by subsection (a)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded.

(4) JUSTIFICATION NOT REQUIRED.—The justification and approval required by paragraph (1) are not required if—

(A) a statute expressly requires that the procurement be made from a specified source;

(B) the agency's need is for a brand-name commercial item for authorized resale;

(C) the procurement is permitted by subsection (a)(7); or

(D) the procurement is conducted under chapter 85 of this title or section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(5) RESTRICTIONS ON EXECUTIVE AGENCIES.—

(A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERVICES.—In no case may an executive agency—

(i) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount available to the agency for procurement functions; or

(ii) procure property or services from another executive agency unless the other executive agency complies fully with the requirements of this division in its procurement of the property or services.

(B) ADDITIONAL RESTRICTION.—The restriction set out in subparagraph (A)(ii) is in addition to any other restriction provided by law.

(f) PUBLIC AVAILABILITY OF JUSTIFICATION AND APPROVAL REQUIRED FOR USING NONCOMPETITIVE PROCEDURES.—

(1) TIME REQUIREMENT.—

(A) WITHIN 14 DAYS AFTER CONTRACT AWARD.—Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (a), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (e)(1) with respect to the procurement.

(B) WITHIN 30 DAYS AFTER CONTRACT AWARD.—In the case of a procurement permitted by subsection (a)(2), subparagraph (A) shall be applied by substituting ''30 days'' for ''14 days''.

(2) AVAILABILITY ON WEBSITES.—The documents referred to in subparagraph (A) of paragraph (1) shall be made available on the website of the agency and through a Government-wide website selected by the Administrator.

(3) EXCEPTION TO AVAILABILITY AND APPROVAL REQUIREMENT.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3748.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3304(a)	41:253(c), (d)(2).	June 30, 1949, ch. 288, title III, § 303(c)–(f), (j), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 90–268, § 2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, title VII, § 2711(a)(1), July 18, 1984, 98 Stat. 1176; Pub. L. 98–577, title V, § 504(a)(2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–145, title IX, § 961(a)(2), title XIII, § 1304(c)(2), Nov. 8, 1985, 99 Stat. 703, 742; Pub. L. 103–355, title I, §§ 1053, 1055(a), title VII, § 7203(b)(1)(A), Oct. 13, 1994, 108 Stat. 3261, 3265, 3380; Pub. L. 104–106, title XLI, § 4102(b), title XLIII, § 4321(e)(2), Feb. 10, 1996, 110 Stat. 643, 674; Pub. L. 104–320, §§ 7(a)(2), 11(c)(2), Oct. 19, 1996, 110 Stat. 3871, 3873; Pub. L. 110–181, div. A, title VIII, § 844(a), Jan. 28, 2008, 122 Stat. 239; Pub. L. 110–417, [div. A], title VIII, § 862(a), Oct. 14, 2008, 122 Stat. 4546.
3304(b)	41:253(d)(1).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3304(c)	41:253(d)(3).	
3304(d)	41:253(e).	
3304(e)(1)	41:253(f)(1).	
3304(e)(2)	41:253(f)(3).	
3304(e)(3), (4).	41:253(f)(2).	
3304(e)(5)	41:253(f)(4).	
3304(f)	41:253(j).	

In subsection (a)(7), the words ''(who may not delegate the authority under this paragraph)'' are substituted for 41:253(d)(2) to move the restriction closer to where it applies.

In subsection (e)(1)(B)(i), the words ''advocate for competition'' are substituted for ''competition advocate'' for consistency with section 1705 of the revised title.

In subsection (e)(1)(B)(ii), the reference to section 5376 of title 5 is substituted for the reference to grade GS–16 or above under the General Schedule because of section 529 [title I, § 101(c)(1)] of the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101–509, 104 Stat. 1442, 5 U.S.C. 5376 note).

In subsection (e)(5)(B), the words ''and not in lieu of'' are omitted as unnecessary.

In subsection (f)(2), the words ''referred to in subparagraph (A) of paragraph (1)'' are added for clarity.

SENATE REVISION AMENDMENT

In subsec. (e)(1)(B)(ii), ''for level IV of the Executive Schedule'' substituted for ''under section 5376 of title 5'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

JUSTIFICATION AND APPROVAL OF SOLE-SOURCE CONTRACTS

Pub. L. 111–84, div. A, title VIII, § 811, Oct. 28, 2009, 123 Stat. 2405, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Federal Acquisition Regulation shall be revised to provide that the head of an agency may not award a sole-source contract in a covered procurement for an amount exceeding $20,000,000 unless—

''(1) the contracting officer for the contract justifies the use of a sole-source contract in writing;

''(2) the justification is approved by the appropriate official designated to approve contract awards for dollar amounts that are comparable to the amount of the sole-source contract; and

''(3) the justification and related information are made public as provided in sections 2304(f)(1)(C) and 2304(*l*) of title 10, United States Code, or sections 303(f)(1)(C) and 303(j) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(C) and 253(j)) [now 41 U.S.C. 3304(e)(1)(C) and 3304(f)], as applicable.

''(b) ELEMENTS OF JUSTIFICATION.—The justification of a sole-source contract required pursuant to subsection (a) shall include the following:

''(1) A description of the needs of the agency concerned for the matters covered by the contract.

''(2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract.

''(3) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

''(4) A determination that the anticipated cost of the contract will be fair and reasonable.

''(5) Such other matters as the head of the agency concerned shall specify for purposes of this section.

''(c) DEFINITIONS.—In this section:

''(1) COVERED PROCUREMENT.—The term 'covered procurement' means either of the following:

''(A) A procurement described in section 2304(f)(2)(D)(ii) of title 10, United States Code.

''(B) A procurement described in section 303(f)(2)(D)(ii) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253(f)(2)(D)(ii)) [see 41 U.S.C. 3304(e)(4)(D)].

''(2) HEAD OF AN AGENCY.—The term 'head of an agency'—

''(A) in the case of a covered procurement as defined in paragraph (1)(A), has the meaning provided in section 2302(1) of title 10, United States Code; and

''(B) in the case of a covered procurement as defined in paragraph (1)(B), has the meaning provided the term 'agency head' in section 309(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(a)) [now 41 U.S.C. 151].

''(3) APPROPRIATE OFFICIAL.—The term 'appropriate official' means—

''(A) in the case of a covered procurement as defined in paragraph (1)(A), an official designated in section 2304(f)(1)(B) of title 10, United States Code; and

''(B) in the case of a covered procurement as defined in paragraph (1)(B), an official designated in section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)) [now 41 U.S.C. 3304(e)(1)(B)].''

§ 3305. Simplified procedures for small purchases

(a) AUTHORIZATION.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than $5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold. The rental rate under a multiyear lease does not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

(c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified procedures required by subsection (a).

(d) PROMOTION OF COMPETITION.—In using the simplified procedures, an executive agency shall promote competition to the maximum extent practicable.

(e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.—An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3752.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3305	41:253(g).	June 30, 1949, ch. 288, title III, § 303(g), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 90–268, § 2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, title VII, § 2711(a)(1), July 18, 1984, 98 Stat. 1178; Pub. L. 99–145, title XIII, § 1304(c)(3), Nov. 8, 1985, 99 Stat. 742; Pub. L. 101–510, title VIII, § 806(c), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103–355, title I, § 1051(2), title IV, § 4402(a), Oct. 13, 1994, 108 Stat. 3260, 3348; Pub. L. 104–106, title XLII, § 4202(b)(1), Feb. 10, 1996, 110 Stat. 653; Pub. L. 105–85, title VIII, § 850(f)(4)(B), Nov. 18, 1997, 111 Stat. 1850.

§ 3306. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.—

(1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under this division shall include specifications that—

(A) consistent with this division, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy those needs. Subject to those needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors that the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and the award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and the award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall—

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations implementing paragraph (1)(C) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not prohibit an executive agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive agency, in issuing a so-

licitation for a contract to be awarded using sealed bid procedures, may not include in the solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.

(f) AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRACTORS.—

(1) DEFINITION.—In this subsection, the term ''executive agency'' has the meaning given that term in section 133 of this title.

(2) FEDERAL ACQUISITION REGULATION TO ALLOW TELECOMMUTING.—The Federal Acquisition Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies.

(3) SCOPE OF ALLOWANCE.—The Federal Acquisition Regulation at a minimum shall provide that a solicitation for the acquisition of property or services may not set forth any requirement or evaluation criteria that would—

(A) render an offeror ineligible to enter into a contract on the basis of the inclusion of a plan of the offeror to allow the offeror's employees to telecommute, unless the contracting officer concerned first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is allowed and documents in writing the basis for the determination; or

(B) reduce the scoring of an offer on the basis of the inclusion in the offer of a plan of the offeror to allow the offeror's employees to telecommute, unless the contracting officer concerned first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed and documents in writing the basis for the determination.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3752.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3306(a)–(e) ..	41:253a.	June 30, 1949, ch. 288, title III, § 303A, as added Pub. L. 98–369, title VII, § 2711(a)(2), July 18, 1984, 98 Stat. 1178; Pub. L. 103–355, title I, §§ 1061(a), (b), 1062, title IV, § 4402(b), Oct. 13, 1994, 108 Stat. 3266, 3267, 3348; Pub. L. 104–106, title XLII, § 4202(b)(2), Feb. 10, 1996, 110 Stat. 653.
3306(f)	41:253a note.	Pub. L. 108–136, title XIV, § 1428, Nov. 24, 2003, 117 Stat. 1670.

In subsection (f)(2), the words ''Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend'' are omitted as obsolete.

§ 3307. Preference for commercial items

(a) RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COMMERCIAL ITEMS.—

(1) THIS DIVISION.—Unless otherwise specifically provided, all other provisions in this division also apply to the procurement of commercial items.

(2) LAWS LISTED IN FEDERAL ACQUISITION REGULATION.—A contract for the procurement of a commercial item entered into by the head of an executive agency is not subject to a law properly listed in the Federal Acquisition Regulation pursuant to section 1906 of this title.

(b) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—

(1) requirements of the executive agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) those requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items may be procured to fulfill those requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill those requirements.

(c) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the executive agency;

(2) require that prime contractors and subcontractors at all levels under contracts of the executive agency incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the executive agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items in response to the executive agency solicitations;

(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(d) MARKET RESEARCH.—

(1) WHEN TO BE USED.—The head of an executive agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that executive agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) USE OF RESULTS.—The head of an executive agency shall use the results of market research to determine whether commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items are available that—

(A) meet the executive agency's requirements;

(B) could be modified to meet the executive agency's requirements; or

(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.

(3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(e) REGULATIONS.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall provide regulations to implement this section, sections 102, 103, 105, and 110 of this title, and chapter 140 of title 10.

(2) CONTRACT CLAUSES.—

(A) DEFINITION.—In this paragraph, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) LIST OF CLAUSES TO BE INCLUDED.—The regulations prescribed under paragraph (1) shall contain a list of contract clauses to be included in contracts for the acquisition of commercial end items. To the maximum extent practicable, the list shall include only those contract clauses that are—

(i) required to implement provisions of law or executive orders applicable to acquisitions of commercial items or commercial components; or

(ii) determined to be consistent with standard commercial practice.

(C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations shall provide that the Federal Government shall not require a prime contractor to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial items any contract clause except those that are—

(i) required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) determined to be consistent with standard commercial practice.

(D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the maximum extent practicable, only the contract clauses listed pursuant to subparagraph (B) may be used in a contract, and only the contract clauses referred to in subparagraph (C) may be required to be used in a subcontract, for the acquisition of commercial items or commercial components by or for an executive agency.

(E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to subparagraph (B), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

(3) MARKET ACCEPTANCE.—

(A) REQUIREMENT OF OFFERORS.—The Federal Acquisition Regulation shall provide that under appropriate conditions the head of an executive agency may require offerors to demonstrate that the items offered—

(i) have achieved commercial market acceptance or been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

(ii) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

(B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The Federal Acquisition Regulation shall provide guidance to ensure that the criteria for determining commercial market acceptance include the consideration of—

(i) the minimum needs of the executive agency concerned; and

(ii) the entire relevant commercial market, including small businesses.

(4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

(A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal Acquisition Regulation shall include, for acquisitions of commercial items—

(i) a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts be used to the maximum extent practicable;

(ii) a prohibition on use of cost type contracts; and

(iii) subject to subparagraph (B), authority for use of a time-and-materials or labor-hour contract for the procurement of commercial services that are commonly sold to the general public through those contracts and are purchased by the procuring agency on a competitive basis.

(B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT MAY BE USED.—A time-and-materials or labor-hour contract may be used pursuant to the authority referred to in subparagraph (A)(iii)—

(i) only for a procurement of commercial services in a category of commercial services described in subparagraph (C); and

(ii) only if the contracting officer for the procurement—

(I) executes a determination and findings that no other contract type is suitable;

(II) includes in the contract a ceiling price that the contractor exceeds at its own risk; and

(III) authorizes a subsequent change in the ceiling price only on a determina-

tion, documented in the contract file, that it is in the best interest of the procuring agency to change the ceiling price.

(C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of commercial services referred to in subparagraph (B) are as follows:

(i) Commercial services procured for support of a commercial item, as described in section 103(5) of this title.

(ii) Any other category of commercial services that the Administrator for Federal Procurement Policy designates in the Federal Acquisition Regulation for the purposes of this subparagraph on the basis that—

(I) the commercial services in the category are of a type of commercial services that are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(II) it would be in the best interests of the Federal Government to authorize use of time-and-materials or labor-hour contracts for purchases of the commercial services in the category.

(5) CONTRACT QUALITY REQUIREMENTS.—Regulations prescribed under paragraph (1) shall include provisions that—

(A) allow, to the maximum extent practicable, a contractor under a commercial items acquisition to use the existing quality assurance system of the contractor as a substitute for compliance with an otherwise applicable requirement for the Federal Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Federal Government;

(B) require that, to the maximum extent practicable, the executive agency take advantage of warranties (including extended warranties) offered by offerors of commercial items and use those warranties for the repair and replacement of commercial items; and

(C) set forth guidance regarding the use of past performance of commercial items and sources as a factor in contract award decisions.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3754.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3307(a)	41:264.	June 30, 1949, ch. 288, title III, §§ 314, 314B, as added Pub. L. 103–355, title VIII, §§ 8201, 8203, Oct. 13, 1994, 108 Stat. 3394.
3307(b)	41:264b(a).	
3307(c)	41:264b(b).	
3307(d)	41:264b(c).	
3307(e)	41:264 note.	Pub. L. 103–355, title VIII, § 8002, Oct. 13, 1994, 108 Stat. 3386; Pub. L. 108–136, title XIV, 1432, Nov. 24, 2003, 117 Stat. 1672.

Subsection (a)(1) is substituted for 41 U.S.C. 264(a) for clarity.

In subsection (e), the text of section 8002(f) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 41 U.S.C. 264 note) is omitted as obsolete.

In subsection (e)(2)(B)(i) and (C)(i), the words ''as the case may be'' are omitted as unnecessary.

§ 3308. Planning for future competition in contracts for major systems

(a) DEVELOPMENT CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a solicitation for the award of a development contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require the proposals, the head of the agency shall consider the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If the proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENTS OF PROPOSALS.—The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

(A) Proposals to incorporate in the design of the major system items that are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(B) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items that the Federal Government will be able to acquire competitively in the future.

(b) PRODUCTION CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a solicitation for the award of a production contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require the proposals, the head of the agency shall consider the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If the proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENT OF PROPOSALS.—The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the Federal Government will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to this requirement may include the following:

(A) Proposals to provide to the Federal Government the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the Federal Government of acquiring the data and the right to use the data.

(B) Proposals for the qualification or development of multiple sources of supply for the item.

(c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in subsections (a) and (b) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3758.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3308	41:253b(j).	June 30, 1949, ch. 288, title III, § 303B(j), formerly § 303B(f), as added Pub. L. 98–577, title II, § 201(a), Oct. 30, 1984, 98 Stat. 3068; redesignated as § 303B(g), Pub. L. 103–355, title I, § 1064(1), Oct. 13, 1994, 108 Stat. 3268; redesignated as § 303B(j), Pub. L. 104–106, title XLI, § 4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

§ 3309. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under sections 1101 to 1104 of title 40 or another acquisition procedure authorized by law is used, the head of an executive agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

(1) the contracting officer anticipates that 3 or more offers will be received for the contract;

(2) design work must be performed before an offeror can develop a price or cost proposal for the contract;

(3) the offeror will incur a substantial amount of expense in preparing the offer; and

(4) the contracting officer has considered information such as the following:

(A) The extent to which the project requirements have been adequately defined.

(B) The time constraints for delivery of the project.

(C) The capability and experience of potential contractors.

(D) The suitability of the project for use of the two-phase selection procedures.

(E) The capability of the agency to manage the two-phase selection process.

(F) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Federal Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals that meet the Federal Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with sections 1101 to 1104 of title 40.

(2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) EVALUATION FACTORS.—The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team), and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) SELECTION BY CONTRACTING OFFICER.—

(A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(i) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work, or both; and

(ii) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b) to (d) of section 3306 of this title.

(B) SEPARATE EVALUATIONS.—The contracting officer separately evaluates the submissions described in clauses (i) and (ii) of subparagraph (A).

(5) AWARDING OF CONTRACT.—The agency awards the contract in accordance with chapter 37 of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE-TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Federal Government's interest and is consistent with the purposes and objectives of the two-phase selection process.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3759.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3309	41:253m.	June 30, 1949, ch. 288, title III, § 303M, as added Pub. L. 104–106, div. D, title XLI, § 4105(b)(1), Feb. 10, 1996, 110 Stat. 647.

In subsections (a) and (c)(1), the words ''sections 1101 to 1104 of title 40'' are substituted for ''the Brooks Architect-Engineers Act (title IX of this Act)'' and ''the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)'', respectively, because of section 5(c) of Public Law 107–217 (40 U.S.C. note prec. 101) and for consistency with title 40.

In subsection (c)(5), the reference to section 253b of this title is limited to chapter 37 of the revised title for clarity.

§ 3310. Quantities to order

(a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency shall procure supplies in a quantity that—

(1) will result in the total cost and unit cost most advantageous to the Federal Government, where practicable; and

(2) does not exceed the quantity reasonably expected to be required by the agency.

(b) OFFEROR'S OPINION OF QUANTITY.—Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of supplies proposed to be procured is economically advantageous to the Federal Government and, if applicable, to recommend a quantity that would be more economically advantageous to the Federal Government. Each recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3761.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3310	41:253f.	June 30, 1949, ch. 288, title III, § 303F, formerly § 303G, as added Pub. L. 98–577, title II, § 205(a), Oct. 30, 1984, 98 Stat. 3073; renumbered § 303F, Pub. L. 99–145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.

In subsection (b), the words ''or quantities'' are omitted because of 1:1.

§ 3311. Qualification requirement

(a) DEFINITION.—In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Except as provided in subsection (c), the head of an agency, before enforcing any qualification requirement, shall—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror on request all requirements that a prospective offeror, or its product, must satisfy to become qualified, with those requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the cost of testing and evaluation likely to be incurred by a potential offeror to become qualified;

(4) ensure that a potential offeror is provided, on request, a prompt opportunity to demonstrate at its own expense (except as provided in subsection (d)) its ability to meet the standards specified for qualification using—

(A) qualified personnel and facilities—

(i) of the agency concerned;

(ii) of another agency obtained through interagency agreement; or

(iii) under contract; or

(B) other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of paragraph (4), provide to the extent possible that those services be provided by a contractor that—

(A) is not expected to benefit from an absence of additional qualified sources; and

(B) is required in the contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed whether qualification is attained and, if not attained, is promptly furnished specific information about why qualification was not attained.

(c) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

(1) APPLICABILITY.—Subsection (b) does not apply to a qualification requirement established by statute prior to October 30, 1984.

(2) WAIVER AUTHORITY.—

(A) SUBMISSION OF DETERMINATION OF UNREASONABLENESS.—Except as provided in subparagraph (C), if it is unreasonable to specify the standards for qualification that a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement.

(B) AUTHORITY TO GRANT WAIVER.—After considering any comments of the advocate for competition reviewing the determination, the head of the procuring activity may waive the requirements of paragraphs (2) to (5) of subsection (b) for up to 2 years with respect to the item subject to the qualification requirement.

(C) NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—Waiver authority under this paragraph does not apply with respect to a qualified products list.

(3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED.—A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror has not been identified as meeting a qualification requirement if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet those standards before the date specified for award of the contract.

(4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT REQUIRED.—This subsection does not require the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with that requirement.

(5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an agency need not delay a proposed procurement to comply with subsection (b) or to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

(1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PRODUCTS.—If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than 2 actual manufacturers or the products of 2 actual manufacturers, respectively, the head of the agency concerned shall—

(A) publish notice periodically soliciting additional sources or products to seek qualification, unless the contracting officer determines that doing so would compromise national security; and

(B) subject to paragraph (2), bear the cost of conducting the specified testing and evaluation (excluding the cost associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern that has met the standards specified for qualification and that could reasonably be expected to compete for a contract for that requirement.

(2) WHEN AGENCY MAY BEAR COST.—The head of the agency concerned may bear the cost under paragraph (1)(B) only if the head of the agency determines that the additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to offset (within a reasonable period of time considering the duration and dollar value of anticipated future requirements) the cost incurred by the agency.

(3) CERTIFICATION REQUIRED.—The head of the agency shall require a prospective contractor requesting the Federal Government to bear testing and evaluation costs under paragraph (1)(B) to certify its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within 7 years after the establishment of a qualification requirement, the need for the requirement shall be examined and the standards of the requirement revalidated in accordance with the requirements of subsection (b). This subsection does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT ALLOWED.—Except in an emergency as determined by the head of the agency, after the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not enforce the requirement unless the agency complies with the requirements of subsection (b).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3761.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3311	41:253c.	June 30, 1949, ch. 288, title III, § 303C, formerly § 303D, as added Pub. L. 98–577, title II, § 202(a), Oct. 30, 1984, 98 Stat. 3069; renumbered § 303C, Pub. L. 99–145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.

In subsection (d)(1)(A), the words ''in the Commerce Business Daily'' are omitted as obsolete. See revision note for section 1708(d) of the revised title.

§ 3312. Database on price trends of items and services under Federal contracts

(a) DATABASE REQUIRED.—The Administrator shall establish and maintain a database of information on price trends for items and services under contracts with the Federal Government. The information in the database shall be designed to assist Federal acquisition officials in the following:

(1) Monitoring developments in price trends for items and services under contracts with the Federal Government.

(2) Conducting price or cost analyses for items and services under offers for contracts with the Federal Government, or otherwise conducting determinations of the reasonableness of prices for items and services under such offers, and addressing unjustified escalation in prices being paid by the Federal Government for items and services under contracts with the Federal Government.

(b) USE.—(1) The database under subsection (a) shall be available to executive agencies in the evaluation of offers for contracts with the Federal Government for items and services.

(2) The Secretary of Defense may satisfy the requirements of this section by complying with the requirements of section 892 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2306a note).

(Added Pub. L. 112–239, div. A, title VIII, § 851(a)(1), Jan. 2, 2013, 126 Stat. 1855.)

REFERENCES IN TEXT

Section 892 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, referred to in subsec. (b)(2), is section 892 of Pub. L. 111–383, which is set out as a note under section 2306a of Title 10, Armed Forces.

USE OF ELEMENTS OF DEPARTMENT OF DEFENSE PILOT PROJECT

Pub. L. 112–239, div. A, title VIII, § 851(b), Jan. 2, 2013, 126 Stat. 1855, provided that: ''In establishing the database required by section 3312 of title 41, United States Code (as added by subsection (a)), the Administrator for Federal Procurement Policy shall use and incorporate appropriate elements of the pilot project on pricing being carried out by the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to section 892 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111–383] (10 U.S.C. 2306a note) and the Better Buying Power initiative of the Secretary of Defense.''

CHAPTER 35—TRUTHFUL COST OR PRICING DATA

Sec.
3501. General.
3502. Required cost or pricing data and certification.
3503. Exceptions.
3504. Cost or pricing data on below-threshold contracts.
3505. Submission of other information.
3506. Price reductions for defective cost or pricing data.
3507. Interest and penalties for certain overpayments.
3508. Right to examine contractor records.
3509. Notification of violations of Federal criminal law or overpayments.

SENATE REVISION AMENDMENT

In chapter 35 heading, ''OR'' substituted for ''AND'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18683 (2010).

§ 3501. General

(a) DEFINITIONS.—In this chapter:

(1) COMMERCIAL ITEM.—The term ''commercial item'' has the meaning provided the term by section 103 of this title.

(2) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with section 3506(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include factual information from which a judgment was derived.

(3) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(b) REGULATIONS.—

(1) MINIMIZING ABUSE OF COMMERCIAL SERVICES ITEM AUTHORITY.—The Federal Acquisition Regulation shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial items for purposes of this chapter only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the services.

(2) INFORMATION TO SUBMIT.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

(A) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3764.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3501(a)	41:254b(h).	June 30, 1949, ch. 288, title III, § 304A(h), formerly § 304A(i), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3284; redesignated as § 304A(h), Pub. L. 104–106, title XLII, § 4201(b)(2)(B), Feb. 10, 1996, 110 Stat. 652.
3501(b)	41:254b note.	Pub. L. 110–417, [div. A], title VIII, § 868, Oct. 14, 2008, 122 Stat. 4552.

Subsection (a) of Pub. L. 110–417, § 868 is omitted as unnecessary.

In subsection (b)(1), the words ''The Federal Acquisition Regulation'' are substituted for ''The regulations modified pursuant to subsection (a)'' for clarity and conformity with the revised title.

§ 3502. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an executive agency shall require offerors, contractors, and

subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under this division to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(A) in the case of a prime contract entered into after October 13, 1994, the price of the contract to the Federal Government is expected to exceed $500,000; and

(B) in the case of a prime contract entered into on or before October 13, 1994, the price of the contract to the Federal Government is expected to exceed $100,000.

(2) CONTRACTOR.—The contractor for a prime contract under this division shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(A) in the case of a change or modification made to a prime contract referred to in paragraph (1)(A), the price adjustment is expected to exceed $500,000;

(B) in the case of a change or modification made to a prime contract that was entered into on or before October 13, 1994, and that has been modified pursuant to subsection (f), the price adjustment is expected to exceed $500,000; and

(C) in the case of a change or modification not covered by subparagraph (A) or (B), the price adjustment is expected to exceed $100,000.

(3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at any tier) of a contract under this division shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this chapter and—

(A) in the case of a subcontract under a prime contract referred to in paragraph (1)(A), the price of the subcontract is expected to exceed $500,000;

(B) in the case of a subcontract entered into under a prime contract that was entered into on or before October 13, 1994, and that has been modified pursuant to subsection (f), the price of the subcontract is expected to exceed $500,000; and

(C) in the case of a subcontract not covered by subparagraph (A) or (B), the price of the subcontract is expected to exceed $100,000.

(4) SUBCONTRACTOR.—The subcontractor for a subcontract covered by paragraph (3) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(A) in the case of a change or modification to a subcontract referred to in paragraph (3)(A) or (B), the price adjustment is expected to exceed $500,000; and

(B) in the case of a change or modification to a subcontract referred to in paragraph (3)(C), the price adjustment is expected to exceed $100,000.

(b) CERTIFICATION.—A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under subsection (a) (or required by the head of the procuring activity concerned to submit the data under section 3504 of this title) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(c) TO WHOM SUBMITTED.—Cost or pricing data required to be submitted under subsection (a) (or under section 3504 of this title), and a certification required to be submitted under subsection (b), shall be submitted—

(1) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or a designated representative of the contracting officer); or

(2) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(d) APPLICATION OF CHAPTER.—Except as provided under section 3503 of this title, this chapter applies to contracts entered into by the head of an executive agency on behalf of a foreign government.

(e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of requirements for submission of certified cost or pricing data that is granted under section 3503(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) of this section for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under subsection (a)(3) of this section should be waived in the case of those subcontracts and justifies in writing the reason for the determination.

(f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before October 13, 1994, the head of the executive agency that entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All those modifications shall be made without requiring consideration.

(g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year that is divisible by 5, each amount set forth in subsection (a) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3765.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3502	41:254b(a).	June 30, 1949, ch. 288, title III, § 304A(a), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3278; Pub. L. 105–261, div. A, title VIII, § 805(b), Oct. 17, 1998, 112 Stat. 2083.

§ 3503. Exceptions

(a) IN GENERAL.—Submission of certified cost or pricing data shall not be required under section 3502 of this title in the case of a contract, a subcontract, or a modification of a contract or subcontract—

(1) for which the price agreed on is based on—

(A) adequate price competition; or

(B) prices set by law or regulation;

(2) for the acquisition of a commercial item; or

(3) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this chapter may be waived and justifies in writing the reasons for the determination.

(b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be required under section 3502 of this title if—

(1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1) or (2) of subsection (a); and

(2) the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3766.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3503	41:254b(b).	June 30, 1949, ch. 288, title III, § 304A(b), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3279; Pub. L. 104–106, title XLII, § 4201(b)(1), Feb. 10, 1996, 110 Stat. 651.

In subsection (b)(2), the words ''as the case may be'' are omitted as unnecessary.

§ 3504. Cost or pricing data on below-threshold contracts

(a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified cost or pricing data are not required to be submitted by section 3502 of this title for a contract, subcontract, or modification of a contract or subcontract, the data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that the data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires the data to be submitted under this section, the head of the procuring activity shall justify in writing the reason for the requirement.

(b) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this section for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in section 3503(a)(1) or (2) of this title.

(c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate the functions under this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3767.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3504	41:254b(c).	June 30, 1949, ch. 288, title III, § 304A(c), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3280; Pub. L. 104–106, title XLII, §§ 4201(b)(1), 4321(e)(3), Feb. 10, 1996, 110 Stat. 651, 675.

§ 3505. Submission of other information

(a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3503(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

(b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under subsection (a):

(1) REASONABLE LIMITATIONS.—Reasonable limitations on requests for sales data relating to commercial items.

(2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) INFORMATION NOT TO BE DISCLOSED.—A statement that any information received re-

lating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3767.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3505	41:254b(d).	June 30, 1949, ch. 288, title III, § 304A(d), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3281; Pub. L. 104–106, title XLII, §§ 4201(b)(1), 4321(e)(4), Feb. 10, 1996, 110 Stat. 652, 675; Pub. L. 105–261, div. A, title VIII, § 808(b), Oct. 17, 1998, 112 Stat. 2085.

§ 3506. Price reductions for defective cost or pricing data

(a) PROVISION REQUIRING ADJUSTMENT.—

(1) IN GENERAL.—A prime contract (or change or modification to a prime contract) under which a certificate under section 3502(b) of this title is required shall contain a provision that the price of the contract to the Federal Government, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the executive agency that the price was increased because the contractor (or any subcontractor required to make the certificate available) submitted defective cost or pricing data.

(2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of this chapter, defective cost or pricing data are cost or pricing data that, as of the date of agreement on the price of the contract (or another date agreed on between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree on a date other than the date of agreement on the price of the contract, the date agreed on by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under a contract provision required by subsection (a) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it is a defense that the Federal Government did not rely on the defective data submitted by the contractor or subcontractor.

(c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract under a contract provision required by subsection (a) that—

(1) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(A) was the sole source of the property or services procured; or

(B) otherwise was in a superior bargaining position with respect to the property or services procured;

(2) the contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(3) the contract was based on an agreement between the contractor and the Federal Government about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(4) the prime contractor or subcontractor did not submit a certification of cost or pricing data relating to the contract as required by section 3502(b) of this title.

(d) OFFSETS.—

(1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by subsection (a) if—

(A) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(B) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable, consistent with subsection (a)(2), another date agreed on by the parties, and that the data were not submitted as specified in section 3502(c) of this title before that date.

(2) WHEN NOT ALLOWED.—A contractor shall not be allowed to offset an amount otherwise authorized to be offset under paragraph (1) if—

(A) the certification under section 3502(b) of this title with respect to the cost or pricing data involved was known to be false when signed; or

(B) the Federal Government proves that, had the cost or pricing data referred to in paragraph (1)(B) been submitted to the Federal Government before date of agreement on the price of the contract (or price of the modification), or, if applicable, under subsection (a)(2), another date agreed on by the parties, the submission of the cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3768.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3506	41:254b(e).	June 30, 1949, ch. 288, title III, § 304A(e), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3282.

§ 3507. Interest and penalties for certain overpayments

(a) IN GENERAL.—If the Federal Government makes an overpayment to a contractor under a contract with an executive agency subject to this chapter and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the Federal Government—

(1) for interest on the amount of the overpayment, to be computed—

(A) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of the overpayment to the Federal Government; and

(B) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621); and

(2) if the submission of the defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.—Any liability under this section of a contractor that submits cost or pricing data but refuses to submit the certification required by section 3502(b) of this title with respect to the cost or pricing data is not affected by the refusal to submit the certification.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3769.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3507	41:254b(f).	June 30, 1949, ch. 288, title III, § 304A(f), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3283.

§ 3508. Right to examine contractor records

For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this chapter, an executive agency shall have the authority provided by section 4706(b)(2) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3770.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3508	41:254b(g).	June 30, 1949, ch. 288, title III, § 304A(g), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3283.

§ 3509. Notification of violations of Federal criminal law or overpayments

(a) DEFINITION.—In this section, the term ''covered contract'' means any contract in an amount greater than $5,000,000 and more than 120 days in duration.

(b) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include, pursuant to FAR Case 2007–006 (as published at 72 Fed. Reg. 64019, November 14, 2007) or any follow-on FAR case, provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3770.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3509	41:251 note.	Pub. L. 110–252, title VI, §§ 6102, 6103, June 30, 2008, 122 Stat. 2386, 2387.

In subsection (b), the words ''shall include'' are substituted for ''shall be amended'' and ''to include'' to reflect the permanence of the provision. The words ''within 180 days after the date of the enactment of this Act'' are omitted as obsolete.

CHAPTER 37—AWARDING OF CONTRACTS

Sec.
3701. Basis of award and rejection.
3702. Sealed bids.
3703. Competitive proposals.
3704. Post-award debriefings.
3705. Pre-award debriefings.
3706. Encouragement of alternative dispute resolution.
3707. Antitrust violations.
3708. Protests.

§ 3701. Basis of award and rejection

(a) AWARD.—An executive agency shall evaluate sealed bids and competitive proposals, and award a contract, based solely on the factors specified in the solicitation.

(b) REJECTION.—All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that rejection is in the public interest.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3770.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3701(a)	41:253b(a).	June 30, 1949, ch. 288, title III, § 303B(a), (b), as added Pub. L. 98–369, title VII, § 2711(a)(2), July 18, 1984, 98 Stat. 1179; Pub. L. 103–355, title I, § 1061(c)(1), Oct. 13, 1994, 108 Stat. 3267.
3701(b)	41:253b(b).	

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 98–577, title I, § 101, Oct. 30, 1984, 98 Stat. 3066, provided that: ''The purposes of this Act [see Tables for classification] are to—

''(1) eliminate procurement procedures and practices that unnecessarily inhibit full and open competition for contracts;

''(2) promote the use of contracting opportunities as a means to expand the industrial base of the United States in order to ensure adequate responsive capability of the economy to the increased demands of the Government in times of national emergency; and

''(3) foster opportunities for the increased participation in the competitive procurement process of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.''

EX. ORD. NO. 12979. AGENCY PROCUREMENT PROTESTS

Ex. Ord. No. 12979, Oct. 25, 1995, 60 F.R. 55171, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure effective and efficient expenditure of public funds and fair and expeditious resolution of protests to the award of Federal procurement contracts, it is hereby ordered as follows:

SECTION 1. Heads of executive departments and agencies (''agencies'') engaged in the procurement of supplies and services shall prescribe administrative procedures for the resolution of protests to the award of their procurement contracts as an alternative to protests in fora outside the procuring agencies. Procedures prescribed pursuant to this order shall:

(a) emphasize that whenever conduct of a procurement is contested, all parties should use their best efforts to resolve the matter with agency contracting officers;

(b) to the maximum extent practicable, provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests, including, where appropriate and as permitted by law, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel;

(c) allow actual or prospective bidders or offerors whose direct economic interests would be affected by the award or failure to award the contract to request a review, at a level above the contracting officer, of any decision by a contracting officer that is alleged to have violated a statute or regulation and, thereby, caused prejudice to the protester; and

(d) except where immediate contract award or performance is justified for urgent and compelling reasons or is determined to be in the best interest of the United States, prohibit award or performance of the contract while a timely filed protest is pending before the agency. To allow for the withholding of a contract award or performance, the agency must have received notice of the protest within either 10 calendar days after the contract award or 5 calendar days after the bidder or offeror who is protesting the contract award was given the opportunity to be debriefed by the agency, whichever date is later.

SEC. 2. The Administrator for Federal Procurement Policy shall: (a) work with the heads of executive agencies to provide policy guidance and leadership necessary to implement provisions of this order; and

(b) review and evaluate agency experience and performance under this order, and report on any findings to the President within 2 years from the date of this order.

SEC. 3. The Administrator of General Services, the Secretary of Defense, and the Administrator of the National Aeronautics and Space Administration, in coordination with the Office of Federal Procurement Policy, shall amend the Federal Acquisition Regulation, 48 C.F.R. 1, within 180 days of the date of this order to further the purposes of this order.

WILLIAM J. CLINTON.

§ 3702. Sealed bids

(a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall evaluate the bids in accordance with section 3701(a) of this title without discussions with the bidders and, except as provided in section 3701(b) of this title, shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the Federal Government, considering only price and the other price-related factors included in the solicitation.

(c) NOTICE OF AWARD.—The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within 3 days after the date of contract award, the executive agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3770.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3702(a)	41:253b(c) (1st sentence).	June 30, 1949, ch. 288, title III, § 303B(c), as added Pub. L. 98–369, title VII, § 2711(a)(2), July 18, 1984, 98 Stat. 1179; Pub. L. 103–355, title I, §§ 1061(c)(2), 1063(a), Oct. 13, 1994, 108 Stat. 3267, 3268.
3702(b)	41:253b(c) (2d sentence).	
3702(a)	41:253b(c) (3d, last sentences).	

§ 3703. Competitive proposals

(a) EVALUATION AND AWARD.—An executive agency shall evaluate competitive proposals in accordance with section 3701(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), if, as required by section 3306(b)(2)(B)(i) of this title, the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with those criteria.

(c) CRITERIA FOR AWARDING CONTRACT.—Except as otherwise provided in section 3701(b) of this title, the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the Federal Government, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The executive agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to that source and, within 3 days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3771.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3703(a)	41:253b(d)(1).	June 30, 1949, ch. 288, title III, § 303B(d), as added Pub. L. 98–369, title VII, § 2711(a)(2), July 18, 1984, 98 Stat. 1180; Pub. L. 103–355, title I, §§ 1061(c)(3), 1063(b), Oct. 13, 1994, 108 Stat. 3267, 3268; Pub. L. 104–106, title XLI, § 4103(b), Feb. 10, 1996, 110 Stat. 644.
3703(b)	41:253b(d)(2).	
3703(c)	41:253b(d)(3) (1st sentence).	
3703(d)	41:253b(d)(3) (last sentence).	

§ 3704. Post-award debriefings

(a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, on written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall debrief the offeror within, to the maximum extent practicable, 5 days after receipt of the request by the executive agency.

(c) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a minimum—

(1) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(2) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(3) the overall ranking of all offers;

(4) a summary of the rationale for the award;

(5) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(6) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for competitive proposals shall include a statement that information described in subsection (c) may be disclosed in post-award debriefings.

(f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of the contract award and as a result of a successful procurement protest, the executive agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the head of the executive agency shall make available to all offerors—

(1) the information provided in debriefings under this section regarding the offer of the contractor awarded the contract; and

(2) the same information that would have been provided to the original offerors.

(g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3771.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3704(a)	41:253b(e)(1) (1st sentence).	June 30, 1949, ch. 288, title III, § 303B(e), as added Pub. L. 103–355, title I, § 1064(2), Oct. 13, 1994, 108 Stat. 3268; Pub. L. 104–106, title XLI, § 4104(b)(1), Feb. 10, 1996, 110 Stat. 645.
3704(b)	41:253b(e)(1) (last sentence).	
3704(c)	41:253b(e)(2).	
3704(d)	41:253b(e)(3).	
3704(e)	41:253b(e)(4).	
3704(f)	41:253b(e)(5).	
3704(g)	41:253b(g) (related to 41:253b(e)).	June 30, 1949, ch. 288, title III, § 303B(g) (related to § 303B(e)), as added Pub. L. 104–106, title XLI, § 4104(b)(3), Feb. 10, 1996, 110 Stat. 645.

§ 3705. Pre-award debriefings

(a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes that offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Federal Government to conduct a debriefing at that time.

(c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required to debrief an excluded offeror in accordance with section 3704 of this title only if that offeror requested and was refused a pre-award debriefing under subsections (a) and (b).

(d) INFORMATION TO BE PROVIDED.—The debriefing conducted under this section shall include—

(1) the executive agency's evaluation of the significant elements in the offeror's offer;

(2) a summary of the rationale for the offeror's exclusion; and

(3) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted pursuant to this section may not disclose the number or identity of

other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3772.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3705(a)	41:253b(f)(1) (1st sentence).	June 30, 1949, ch. 288, title III, § 303B(f), (g) (related to § 303B(f)), as added Pub. L. 104–106, title XLI, § 4104(b)(3), Feb. 10, 1996, 110 Stat. 645.
3705(b)	41:253b(f)(1) (last sentence).	
3705(c)	41:253b(f)(2).	
3705(d)	41:253b(f)(3).	
3705(e)	41:253b(f)(4).	
3705(f)	41:253b(g) (related to 41:253b(f)).	

§ 3706. Encouragement of alternative dispute resolution

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3706	41:253b(h).	June 30, 1949, ch. 288, title III, § 303B(h), as added Pub. L. 104–106, title XLI, § 4104(b)(3), Feb. 10, 1996, 110 Stat. 645.

§ 3707. Antitrust violations

If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, the agency head shall refer the bid or proposal to the Attorney General for appropriate action.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3707	41:253b(i).	June 30, 1949, ch. 288, title III, § 303B(i), formerly § 303B(e), as added Pub. L. 98–369, title VII, § 2711(a)(2), July 18, 1984, 98 Stat. 1180; redesignated as § 303B(f), Pub. L. 103–355, title I, § 1064(1), Oct. 13, 1994, 108 Stat. 3268; redesignated as § 303B(i), Pub. L. 104–106, title XLI, § 4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

§ 3708. Protests

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, and an actual or prospective offeror requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the executive agency may—

(1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of section 3554 of title 31; and

(2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of section 3554(c).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3708(a)	41:253b(k).	June 30, 1949, ch. 288, title III, § 303B(k), formerly § 303B(h), as added Pub. L. 103–355, title I, § 1065, Oct. 13, 1994, 108 Stat. 3269; redesignated as § 303B(k), Pub. L. 104–106, title XLI, § 4104(b)(2), Feb. 10, 1996, 110 Stat. 645; Pub. L. 104–106, title XLI, § 5607(c), Feb. 10, 1996, 110 Stat. 701, as amended Pub. L. 104–201, title X, § 1074(b)(7) (less effective date), Sept. 23, 1996, 110 Stat. 2660.
3708(b)	41:253b(*l*).	June 30, 1949, ch. 288, title III, § 303B(*l*), formerly § 303B(i), as added Pub. L. 103–355, title I, § 1066, Oct. 13, 1994, 108 Stat. 3269; redesignated as § 303B(*l*), Pub. L. 104–106, title XLI, § 4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

CHAPTER 39—SPECIFIC TYPES OF CONTRACTS

Sec.
3901. Contracts awarded using procedures other than sealed-bid procedures.
3902. Severable services contracts for periods crossing fiscal years.
3903. Multiyear contracts.
3904. Contract authority for severable services contracts and multiyear contracts.
3905. Cost contracts.
3906. Cost-reimbursement contracts.

SEPARABILITY

Act June 30, 1949, ch. 288, title VI, § 604, formerly title V, § 504, 63 Stat. 403, renumbered by act Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583, provided that: ''If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.''

SHARE-IN-SAVINGS CONTRACTS

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

''(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40, United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

''(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

''(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

''(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

''(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

''(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent 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 chapter 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.''

EX. ORD. NO. 13496. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Ex. Ord. No. 13496, Jan. 30, 2009, 74 F.R. 6107, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered that:

SECTION 1. *Policy*. This order is designed to promote economy and efficiency in Government procurement. When the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers' productivity is enhanced when workers are well informed of their rights under Federal labor laws, including the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq*. As the Act recognizes, ''encouraging the practice and procedure of collective bargaining and . . . protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection'' will ''eliminate the causes of certain substantial obstructions to the free flow of commerce'' and ''mitigate and eliminate these obstructions when they have oc-

curred.'' 29 U.S.C. 151. Relying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government's contracts.

SEC. 2. *Contract Clause*. Except in contracts exempted in accordance with section 3 of this order, all Government contracting departments and agencies shall, to the extent consistent with law, include the following provisions in every Government contract, other than collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and purchases under the simplified acquisition threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403.

''1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The notice shall include the information contained in the notice published by the Secretary of Labor in the Federal Register (Secretary's Notice).

''2. The contractor will comply with all provisions of the Secretary's Notice, and related rules, regulations, and orders of the Secretary of Labor.

''3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]]. Such other sanctions or remedies may be imposed as are provided in Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]], or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

''4. The contractor will include the provisions of paragraphs (1) through (3) above in every subcontract entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]]) so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: Provided, however, that if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''

SEC. 3. *Administration*.

(a) The Secretary of Labor (Secretary) shall be responsible for the administration and enforcement of this order. The Secretary shall adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order.

(b) Within 120 days of the effective date of this order, the Secretary shall initiate a rulemaking to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of this order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of this order.

(c) Whenever the Secretary finds that an act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions set out in subsection (a) of this section necessary to achieve the purposes of this order, the Secretary promptly shall issue such rules, regulations, or orders as are needed to cause the substitution or addition of appropriate contractual provisions in Government contracts thereafter entered into.

SEC. 4. *Exemptions*. (a) If the Secretary finds that the application of any of the requirements of this order would not serve the purposes of this order or would impair the ability of the Government to procure goods or services on an economical and efficient basis, the Secretary may exempt a contracting department or agency or group of departments or agencies from the requirements of any or all of the provisions of this order with respect to a particular contract or subcontract or any class of contracts or subcontracts.

(b) The Secretary may, if the Secretary finds that special circumstances require an exemption in order to serve the national interest, exempt a contracting department or agency from the requirements of any or all of the provisions of section 2 of this order with respect to a particular contract or subcontract or class of contracts or subcontracts.

SEC. 5. *Investigation*.

(a) The Secretary may investigate any Government contractor, subcontractor, or vendor to determine whether the contractual provisions required by section 2 of this order have been violated.

Such investigations shall be conducted in accordance with procedures established by the Secretary.

(b) The Secretary shall receive and investigate complaints by employees of a Government contractor or subcontractor, where such complaints allege a failure to perform or a violation of the contractual provisions required by section 2 of this order.

SEC. 6. *Compliance*.

(a) The Secretary, or any agency or officer in the executive branch lawfully designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, regarding compliance with this order as the Secretary may deem advisable.

(b) The Secretary may hold hearings, or cause hearings to be held, in accordance with subsection (a) of this section, prior to imposing, ordering, or recommending the imposition of sanctions under this order. Neither an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under section 7(b) of this order nor the inclusion of a contractor on a published list of noncomplying contractors under section 7(c) of this order shall be carried out without affording the contractor an opportunity for a hearing.

SEC. 7. *Remedies*. In accordance with such rules, regulations, or orders as the Secretary may issue or adopt, the Secretary may:

(a) after consulting with the contracting department or agency, direct that department or agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor to comply with the contractual provisions required by section 2 of this order; contracts may be cancelled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon future compliance: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of the contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that completion of the contract is essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of the contracting department or agency, or his or her designee, continues to object to the issuance of such directive;

(b) after consulting with each affected contracting department or agency, provide that one or more contracting departments or agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has sat-

isfied the Secretary that such contractor has complied with and will carry out the provisions of this order: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of each contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that further contracts or extensions or other modifications of existing contracts with the noncomplying contractor are essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of a contracting department or agency, or his or her designee, continues to object to the issuance of such directive; and

(c) publish, or cause to be published, the names of contractors that have, in the judgment of the Secretary, failed to comply with the provisions of this order or of related rules, regulations, and orders of the Secretary.

SEC. 8. *Reports*. Whenever the Secretary invokes section 7(a) or 7(b) of this order, the contracting department or agency shall report to the Secretary the results of the action it has taken within such time as the Secretary shall specify.

SEC. 9. *Cooperation*. Each contracting department and agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions under this order.

SEC. 10. *Sufficiency of Remedies*. If the Secretary finds that the authority vested in the Secretary by sections 5 through 9 of this order is not sufficient to effectuate the purposes of this order, the Secretary shall develop recommendations on how better to effectuate those purposes.

SEC. 11. *Delegation*. The Secretary may, in accordance with law, delegate any function or duty of the Secretary under this order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

SEC. 12. *Implementation*. To the extent permitted by law, the Federal Acquisition Regulatory Council (FAR Council) shall take whatever action is required to implement in the Federal Acquisition Regulation (FAR) the provisions of this order and any related rules, regulations, or orders issued by the Secretary under this order and shall amend the FAR to require each solicitation of offers for a contract to include a provision that implements section 2 of this order.

SEC. 13. *Revocation of Prior Order and Actions*. Executive Order 13201 of February 17, 2001, is revoked. The heads of executive departments and agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13201.

SEC. 14. *Severability*. If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 15. *General Provisions*.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 16. *Effective Date*. This order shall become effective immediately, and shall apply to contracts resulting from solicitations issued on or after the effective date of the rule promulgated by the Secretary pursuant to section 3(b) of this order.

BARACK OBAMA.

EX. ORD. NO. 13502. USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

Ex. Ord. No. 13502, Feb. 6, 2009, 74 F.R. 6985, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

SECTION 1. *Policy*. (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

SEC. 2. *Definitions*.

(a) The term ''labor organization'' as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term ''construction'' as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term ''large-scale construction project'' as used in this order means a construction project where the total cost to the Federal Government is $25 million or more.

(d) The term ''executive agency'' as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term ''project labor agreement'' as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

SEC. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

SEC. 4. Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, and Executive Orders.

SEC. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

SEC. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

SEC. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

SEC. 8. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

SEC. 9. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. *General.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 11. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

BARACK OBAMA.

§ 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) REQUIRED WARRANTY.—

(1) CONTENT.—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) REMEDY FOR BREACH OR VIOLATION.—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) NONAPPLICATION.—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3901	41:254(a).	June 30, 1949, ch. 288, title III, § 304(a), 63 Stat. 395; Pub. L. 98–369, div. B, title VII, § 2714(a)(3)(A), (B), July 18, 1984, 98 Stat. 1184; Pub. L. 103–355, title IV, § 4103(c), title VIII, § 8204(b), Oct. 13, 1994, 108 Stat. 3341, 3396.

In subsection (b)(2), the words ''in its discretion'' are omitted as unnecessary.

§ 3902. Severable services contracts for periods crossing fiscal years

(a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3902	41:253*l*.	June 30, 1949, ch. 288, title III, § 303L, as added Pub. L. 103–355, title I, § 1073, Oct. 13, 1994, 108 Stat. 3271, as amended Pub. L. 104–106, title XLIII, § 4321(a)(1), Feb. 10, 1996, 110 Stat. 671.

SEVERABLE SERVICES AND MULTIYEAR CONTRACT AUTHORITY OF JUDICIAL ENTITIES

Pub. L. 113–76, div. E, title III, § 306, Jan. 17, 2014, 128 Stat. 203, provided that: ''The Supreme Court of the United States, the Federal Judicial Center, and the United States Sentencing Commission are hereby authorized, now and hereafter, to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into contracts for multiple years for the acquisition of property and services, to the same extent as executive agencies under the authority of 41 U.S.C. sections 3902 and 3903, respectively.''

§ 3903. Multiyear contracts

(a) DEFINITION.—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(c) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of the contract in a fiscal year covered by the contract. Funds available for paying termination costs shall remain available for that purpose until the costs associated with termination of the contract are paid.

(d) CANCELLATION CEILING NOTICE.—Before a contract described in subsection (b) that contains a clause setting forth a cancellation ceiling in excess of $10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to Congress. The contract may not be awarded until the end of the 30-day period beginning on the date of the notification.

(e) CONTINGENCY CLAUSE FOR APPROPRIATION OF FUNDS.—A multiyear contract may provide that performance under the contract after the first year of the contract is contingent on the appropriation of funds and (if the contract does so provide) that a cancellation payment shall be made to the contractor if the funds are not appropriated.

(f) OTHER LAW NOT AFFECTED.—This section does not modify or affect any other provision of law that authorizes multiyear contracts.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3903(a)	41:254c(d) (1st sentence).	June 30, 1949, ch. 288, title III, § 304B, as added Pub. L. 103–355, title I, § 1072, Oct. 13, 1994, 108 Stat. 3270.
3903(b)	41:254c(a).	
3903(c)	41:254c(b).	
3903(d)	41:254c(c).	
3903(e)	41:254c(d) (last sentence).	
3903(f)	41:254c(e).	

§ 3904. Contract authority for severable services contracts and multiyear contracts

(a) COMPTROLLER GENERAL.—The Comptroller General may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and nonaudit-related services to the same extent as executive agencies under sections 3902 and 3903 of this title.

(b) LIBRARY OF CONGRESS.—The Library of Congress may use available funds to enter into contracts for the lease or procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and services pursuant to sections 3902 and 3903 of this title.

(c) CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.—The Chief Administrative Officer of the House of Representatives may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and may enter into multiyear contracts for the acquisition of property and services to the same extent as executive agencies under the authority of sections 3902 and 3903 of this title.

(e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE.—Subject to regulations prescribed by the Committee on Rules and Administration of the Senate, the Secretary and the Sergeant at Arms and Doorkeeper of the Senate may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent and under the same conditions as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services to the same extent and under the same conditions as executive agencies under the authority of section 3903 of this title.

(f) CAPITOL POLICE.—The United States Capitol Police may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of the Smithsonian Institution may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services under the authority of section 3903 of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3775.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3904(a)	41:253*l*–1.	Pub. L. 105–18, title II, § 7004, June 12, 1997, 111 Stat. 192.
3904(b)	41:253*l*–2.	Pub. L. 106–57, title II, § 207, Sept. 29, 1999, 113 Stat. 423.
3904(c)	41:253*l*–3.	Pub. L. 106–554, § 1(a)(2) [title I, §§ 101, 110], Dec. 21, 2000, 114 Stat. 2763A–100, 2763A–108.
3904(d)	41:253*l*–4.	
3904(e)	41:253*l*–5.	Pub. L. 108–7, div. H, title I, §§ 5, 1002, 1202, Feb. 20, 2003, 117 Stat. 350, 357, 373.
3904(f)	41:253*l*–6.	
3904(g)	41:253*l*–7.	
3904(h)	41:253*l*–8.	Pub. L. 108–72, § 4, Aug. 15, 2003, 117 Stat. 889.

In subsections (a)–(c) and (e)–(h), the words ''procurement of severable services'' are substituted for ''acquisition of severable services'' for consistency with 41:253*l*, restated as section 3902 of the revised title.

In subsection (c), the words ''During fiscal year 2001 and any succeeding fiscal year'' are omitted as obsolete.

In subsection (d), the words ''Beginning on December 21, 2000, and hereafter'' are omitted as obsolete.

In subsection (e), the text of 41:253*l*–5(b) is omitted as obsolete.

In subsection (f), the text of 41:253*l*–6(b) is omitted as obsolete.

In subsection (g), the text of 41:253*l*–7(b) is omitted as obsolete.

In subsection (h), the text of 41:253*l*–8(b) is omitted as obsolete.

§ 3905. Cost contracts

(a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the estimated cost of the contract, not including the fee, as determined by the agency head at the time of entering into the contract.

(2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The fee in a cost-plus-a-fixed-fee contract for experimental, developmental, or research work shall not exceed 15 percent of the estimated cost of the contract, not including the fee.

(3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a cost-plus-a-fixed-fee contract for architectural or engineering services relating to any public works or utility project may include the contractor's costs and shall not exceed 6 percent of the estimated cost, not including the fee, as determined by the agency head at the time of entering into the contract, of the project to which the fee applies.

(c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either the simplified acquisition threshold or 5 percent of the total estimated cost of the prime contract.

(d) RIGHT TO AUDIT.—A procuring agency, through any authorized representative thereof, has the right to inspect the plans and to audit the books and records of a prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3776.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3905(a)	41:254(b) (1st sentence words before 1st comma).	June 30, 1949, ch. 288, title III, § 304(b), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 103–355, title I, § 1071, title IV, § 4402(c), title X, § 10005(e), Oct. 13, 1994, 108 Stat. 3270, 3349, 3408.
3905(b)	41:254(b) (1st sentence words after 1st comma).	
3905(c)	41:254(b) (last sentence words before semicolon).	
3905(d)	41:254(b) (last sentence words after semicolon).	

§ 3906. Cost-reimbursement contracts

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) REGULATIONS ON THE USE OF COST-REIMBURSEMENT CONTRACTS.—The Federal Acquisition Regulation shall address the use of cost-reimbursement contracts.

(c) CONTENT.—The regulations promulgated under subsection (b) shall include guidance regarding—

(1) when and under what circumstances cost-reimbursement contracts are appropriate;

(2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts; and

(3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—The Director of the Office of Management and Budget shall submit an annual report to Congressional committees identified in subsection (e) on the use of cost-reimbursement contracts and task or delivery orders by all executive agencies.

(2) CONTENTS.—The report shall include—

(A) the total number and value of contracts awarded and orders issued during the covered fiscal year;

(B) the total number and value of cost-reimbursement contracts awarded and orders issued during the covered fiscal year; and

(C) an assessment of the effectiveness of the regulations promulgated pursuant to subsection (b) in ensuring the appropriate use of cost-reimbursement contracts.

(3) TIME REQUIREMENTS.—

(A) DEADLINE.—The report shall be submitted no later than March 1 and shall cover the fiscal year ending September 30 of the prior year.

(B) LIMITATION.—The report shall be submitted from March 1, 2009, until March 1, 2014.

(e) CONGRESSIONAL COMMITTEES.—The report required by subsection (d) shall be submitted to—

(1) the Committee on Oversight and Government Reform of the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committees on Appropriations of the House of Representatives and the Senate; and

(4) in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3777.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3906	41:254 note.	Pub. L. 110–417, [div. A], title VIII, § 864(a), (b), (d), (e), (f)(2), (g), Oct. 14, 2008, 122 Stat. 4549.

In subsection (b), the words ''Not later than 270 days after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The words ''shall address'' are substituted for ''shall be revised to address'' to reflect the permanence of the provision.

In subsection (d), the words ''Subject to subsection (f)'' are omitted as unnecessary.

AMENDMENT OF FEDERAL ACQUISITION REGULATION

Pub. L. 111–350, § 6(f)(5), Jan. 4, 2011, 124 Stat. 3855, provided that: ''The Federal Acquisition Regulation shall be amended to meet the requirements of section 3906(b) of title 41, United States Code, not later than 270 days after October 14, 2008.''

CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS

Sec.
4101. Definitions.
4102. Authorities or responsibilities not affected.
4103. General authority.
4104. Guidance on use of task and delivery order contracts.
4105. Advisory and assistance services.
4106. Orders.

§ 4101. Definitions

In this chapter:

(1) DELIVERY ORDER CONTRACT.—The term ''delivery order contract'' means a contract for property that—

(A) does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the delivery of property during the period of the contract.

(2) TASK ORDER CONTRACT.—The term ''task order contract'' means a contract for services that—

(A) does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the performance of tasks during the period of the contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3778.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4101	41:253k.	June 30, 1949, ch. 288, title III, § 303K, as added Pub. L. 103–355, title I, § 1054(a), Oct. 13, 1994, 108 Stat. 3265.

§ 4102. Authorities or responsibilities not affected

This chapter does not modify or supersede, and is not intended to impair or restrict, authorities or responsibilities under sections 1101 to 1104 of title 40.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3778.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4102	41:253h note.	Pub. L. 103–355, § 1054(b), Oct. 13, 1994, 108 Stat. 3265.

The text of section 1054(b)(1) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, 41:253h note) is omitted as obsolete.

§ 4103. General authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task or delivery order contract for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include—

(1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option;

(2) the maximum quantity or dollar value of the services or property to be procured under the contract; and

(3) a statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an executive agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in section 3304(a) of this title applies to the contract and the use of those procedures is approved in accordance with section 3304(e) of this title.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

(1) EXERCISE OF AUTHORITY.—The head of an executive agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the executive agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to 2 or more sources.

(2) DETERMINATION NOT REQUIRED.—No determination under section 3303 of this title is required for an award of multiple task or delivery order contracts under paragraph (1)(B).

(3) SINGLE SOURCE AWARD FOR TASK OR DELIVERY ORDER CONTRACTS EXCEEDING $100,000,000.—

(A) WHEN SINGLE AWARDS ARE ALLOWED.—No task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source unless the head of the executive agency determines in writing that—

(i) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) the contract provides only for firm, fixed price task orders or delivery orders for—

(I) products for which unit prices are established in the contract; or

(II) services for which prices are established in the contract for the specific tasks to be performed;

(iii) only one source is qualified and capable of performing the work at a reasonable price to the Federal Government; or

(iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(B) NOTIFICATION OF CONGRESS.—The head of the executive agency shall notify Congress within 30 days after any determination under subparagraph (A)(iv).

(4) REGULATIONS.—Regulations implementing this subsection shall establish—

(A) a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under paragraph (1)(B); and

(B) criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 4105 of this title, this section does not apply to a task or delivery order contract for the acquisition of advisory and assistance services (as defined in section 1105(g) of title 31).

(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an executive agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3778.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4103	41:253h.	June 30, 1949, ch. 288, title III, § 303H, as added Pub. L. 103–355, title I, § 1054(a), Oct. 13, 1994, 108 Stat. 3261; Pub. L. 110–181, title VIII, § 843(b)(1), Jan. 28, 2008, 122 Stat. 238.

In subsection (a), the words ''(as defined in section 253k of this title)'' are omitted as unnecessary.

§ 4104. Guidance on use of task and delivery order contracts

(a) GUIDANCE IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall provide guidance to agencies on the appropriate use of task and delivery order contracts in accordance with this chapter and sections 2304a to 2304d of title 10.

(b) CONTENT OF REGULATIONS.—The regulations issued pursuant to subsection (a) at a minimum shall provide specific guidance on—

(1) the appropriate use of Government-wide and other multiagency contracts entered into in accordance with this chapter and sections 2304a to 2304d of title 10; and

(2) steps that agencies should take in entering into and administering multiple award

task and delivery order contracts to ensure compliance with the requirement in—

(A) section 11312 of title 40 for capital planning and investment control in purchases of information technology products and services;

(B) section 4106(c) of this title and section 2304c(b) of title 10 to ensure that all contractors are afforded a fair opportunity to be considered for the award of task and delivery orders; and

(C) section 4106(e) of this title and section 2304c(c) of title 10 for a statement of work in each task or delivery order issued that clearly specifies all tasks to be performed or property to be delivered under the order.

(c) FEDERAL SUPPLY SCHEDULES PROGRAM.—The Administrator for Federal Procurement Policy shall consult with the Administrator of General Services to assess the effectiveness of the multiple awards schedule program of the General Services Administration referred to in section 152(3) of this title that is administered as the Federal Supply Schedules program. The assessment shall include examination of—

(1) the administration of the program by the Administrator of General Services; and

(2) the ordering and program practices followed by Federal customer agencies in using schedules established under the program.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3780.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4104	41:253h note.	Pub. L. 106–65, div. A, title VIII, § 804, Oct. 5, 1999, 113 Stat. 704.

In this section, the text of section 804(d) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65, 41:253h note) is omitted as obsolete.

In subsection (a), the words ''Not later than 180 days after the date of the enactment of this Act'' and ''be revised to'' are omitted as obsolete.

In subsection (b)(1), the words ''this chapter and sections 2304a to 2304d of title 10'' are substituted for ''the provisions of law referred to in that subsection'' for clarity.

§ 4105. Advisory and assistance services

(a) DEFINITION.—In this section, the term ''advisory and assistance services'' has the same meaning given that term in section 1105(g) of title 31.

(b) AUTHORITY TO AWARD.—

(1) IN GENERAL.—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task order contract for procurement of advisory and assistance services.

(2) ONLY UNDER THIS SECTION.—The head of an executive agency may enter into a task order contract for advisory and assistance services only under this section.

(c) CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to the contract.

(d) CONTENT OF NOTICE.—The notice required by section 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

(1) SOLICITATION.—The solicitation shall include the information (regarding services) described in section 4103(b) of this title.

(2) CONTRACT.—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) MULTIPLE AWARDS.—

(1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one solicitation, the head of an executive agency may award separate task order contracts under this section for the same or similar services to 2 or more sources if the solicitation states that the head of the executive agency has the option to do so.

(2) CONTENT OF SOLICITATION.—In the case of a task order contract for advisory and assistance services to be entered into under this section, if the contract period is to exceed 3 years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the executive agency may also elect to award only one task order contract if the head of the executive agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) NONAPPLICATION.—Paragraph (2) does not apply in the case of a solicitation for which the head of the executive agency concerned determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

(g) CONTRACT MODIFICATIONS.—

(1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures other than competitive procedures is authorized by an exception in section 3304(a) of this title and approved in accordance with section 3304(e) of this title, competitive procedures shall be used for making such a modification.

(3) NOTICE.—Notice regarding the modification shall be provided in accordance with sec-

tion 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) CONTRACT EXTENSIONS.—

(1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f), a contract entered into by the head of an executive agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the head of the executive agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into the contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3780.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4105(a)	41:253i(i).	June 30, 1949, ch. 288, title III, § 303I, as added Pub. L. 103–355, title I, § 1054(a), Oct. 13, 1994, 108 Stat. 3262.
4105(b)	41:253i(a).	
4105(c)(1)	41:253i(b).	
4105(c)(2)	41:253i note.	Pub. L. 109–364, div. A, title VIII, § 834(b), (c) (related to (b)), Oct. 17, 2006, 120 Stat. 2333.
4105(d)	41:253i(c).	
4105(e)	41:253i(d).	
4105(f)	41:253i(e).	
4105(g)	41:253i(f).	
4105(h)	41:253i(g).	
4105(i)	41:253i(h).	

In subsection (b)(1), the words ''(as defined in section 253k of this title)'' are omitted as unnecessary.

In subsection (c)(2)(C), the words ''Committee on Oversight and Government Reform'' are substituted for ''Committee on Government Reform'' on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

SENATE REVISION AMENDMENT

Senate amendment to the bill effectively struck out subsec. (c)(2) and redesignated subsec. (c)(1) as (c). See S. Amdt. 4726 (111th Cong.), 156 Cong. Rec. 18683 (2010).

§ 4106. Orders

(a) APPLICATION.—This section applies to task and delivery order contracts entered into under sections 4103 and 4105 of this title.

(b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for the order under section 1708 of this title or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3304(e) of this title) that is separate from that used for entering into the contract.

(c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are awarded under section 4103(d)(1)(B) or 4105(f) of this title, all contractors awarded the contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts, unless—

(1) the executive agency's need for the services or property ordered is of such unusual urgency that providing the opportunity to all of those contractors would result in unacceptable delays in fulfilling that need;

(2) only one of those contractors is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor to satisfy a minimum guarantee.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF $5,000,000.—In the case of a task or delivery order in excess of $5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the executive agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the executive agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting—

(A) the basis for the award; and

(B) the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title.

(e) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) PROTESTS.—

(1) PROTEST NOT AUTHORIZED.—A protest is not authorized in connection with the issuance

or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of $10,000,000.

(2) JURISDICTION OVER PROTESTS.—Notwithstanding section 3556 of title 31, the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(3) EFFECTIVE PERIOD.—Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.

(g) TASK AND DELIVERY ORDER OMBUDSMAN.—

(1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The head of each executive agency who awards multiple task or delivery order contracts under section 4103(d)(1)(B) or 4105(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on those contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency's advocate for competition.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3782; Pub. L. 111–383, div. A, title X, § 1075(f)(5)(B), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 112–81, div. A, title VIII, § 813, Dec. 31, 2011, 125 Stat. 1491.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 253j of former Title 41, Public Contracts, which was amended by Pub. L. 110–181, div. A, title VIII, § 843(b)(2)(C), Jan. 28, 2008, 122 Stat. 239, to add subsec. (e), from which subsec. (f) of this section was derived, prior to being repealed and reenacted as this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. The directory language of section 843(b)(2)(C) of Pub. L. 110–181 was amended by Pub. L. 111–383, div. A, title X, § 1075(f)(5)(B), Jan. 7, 2011, 124 Stat. 4376. For applicability of that amendment to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 843(b)(2)(C) of Pub. L. 110–181 was amended by striking ''paragraph (1)'' and inserting ''subparagraph (A)''.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4106(a)	41:253j(g).	June 30, 1949, ch. 288, title III, § 303J, as added Pub. L. 103–355, title I, § 1054(a), Oct. 13, 1994, 108 Stat. 3264; Pub. L. 110–181, div. A, title VIII, § 843(b)(2), Jan. 28, 2008, 122 Stat. 238.
4106(b)	41:253j(a).	
4106(c)	41:253j(b).	
4106(d)	41:253j(d).	
4106(e)	41:253j(c).	
4106(f)	41:253j(e).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4106(g)	41:253j(f).	

In subsection (g)(2), the words ''advocate for competition'' are substituted for ''competition advocate'' for consistency with section 1705 of the revised title.

AMENDMENTS

2011—Subsec. (f)(3). Pub. L. 112–81 amended par. (3) generally. Prior to amendment, text read as follows: ''This subsection shall be in effect for three years, beginning on the date that is 120 days after January 28, 2008.''

CHAPTER 43—ALLOWABLE COSTS

Sec.
4301. Definitions.
4302. Adjustment of threshold amount of covered contract.
4303. Effect of submission of unallowable costs.
4304. Specific costs not allowable.
4305. Required regulations.
4306. Applicability of regulations to subcontractors.
4307. Contractor certification.
4308. Penalties for submission of cost known to be unallowable.
4309. Burden of proof on contractor.
4310. Proceeding costs not allowable.

§ 4301. Definitions

In this chapter:

(1) COMPENSATION.—The term ''compensation'', for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

(2) COVERED CONTRACT.—The term ''covered contract'' means a contract for an amount in excess of $500,000 that is entered into by an executive agency, except that the term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

(3) FISCAL YEAR.—The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

(4) SENIOR EXECUTIVE.—The term ''senior executive'', with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3784.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4301(1)	41:256(m)(1).	June 30, 1949, ch. 288, title III, § 306(m), as added Pub. L. 105–85, title VIII, § 808(b)(2), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 105–261, title VIII, § 804(b), Oct. 17, 1998, 112 Stat. 2083.
4301(2)	41:256(*l*)(1).	June 30, 1949, ch. 288, title III, § 306(*l*)(1), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3315.
4301(3)	41:256(m)(3).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4301(4)	41:256(m)(2).	

§ 4302. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by 5, the amount set forth in section 4301(2) of this title shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An adjusted amount that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. If an amount is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3784.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4302	41:256(*l*)(2).	June 30, 1949, ch. 288, title III, § 306(*l*)(2), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3315.

§ 4303. Effect of submission of unallowable costs

(a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULATION COST PRINCIPLE.—An executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued and if that proposal includes the submission of a cost that is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

(1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the executive agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the Federal Government for the use of the amount which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If the executive agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of that contractor before the submission of that proposal, the executive agency shall assess a penalty against the contractor in an amount equal to 2 times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of an executive agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of this title; and

(2) is appealable in the manner provided in section 7104(a) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3784.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4303(a)	41:256(a).	June 30, 1949, ch. 288, title III, § 306(a)–(d), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3309.
4303(b)	41:256(b).	
4303(c)	41:256(c).	
4303(d)	41:256(d).	

In subsection (a), the words ''(referred to in section 421(c)(1) of this title)'' are omitted as unnecessary.

§ 4304. Specific costs not allowable

(a) SPECIFIC COSTS.—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with those costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification)

brought by the Federal Government where the contractor is found liable or had pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance those payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft that exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') that is—

(A) in an amount in excess of the normal severance pay paid by the contractor to an employee on termination of employment; and

(B) paid to the employee contingent on, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a Federal Government facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the Federal Government or a State, to the extent provided in section 4310 of this title.

(16)[1] Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $625,000 adjusted annually for the U.S. Bureau of Labor Statistics Employment Cost Index for total compensation for private industry workers, by occupational and industry group not seasonally adjusted, except that the executive agency may establish exceptions for positions in the science, technology, engineering, mathematics, medical, and cybersecurity fields and other fields requiring unique areas of expertise upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.

(16)[1] Costs of compensation of contractor and subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $487,000 per year, adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics, except that the head of an executive agency may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.

(b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATIONALS.—

(1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, an executive agency, in awarding a covered contract, may waive the application of paragraphs (13) and (14) of subsection (a) to that contract if the executive agency determines that—

(A) the application of those provisions to that contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;

(B) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(C) the payment of severance pay is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An executive agency shall include in the solicitation for a covered contract a statement indicating—

(A) that a waiver has been granted under paragraph (1) for the contract; or

(B) whether the executive agency will consider granting a waiver and, if the executive agency will consider granting a waiver, the criteria to be used in granting the waiver.

[1] So in original. Two pars. (16) have been enacted.

(3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—An executive agency shall make the final determination whether to grant a waiver under paragraph (1) with respect to a covered contract before award of the contract.

(c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation implementing this chapter may establish appropriate definitions, exclusions, limitations, and qualifications. A submission by a contractor of costs that are incurred by the contractor and that are claimed to be allowable under Department of Energy management and operating contracts shall be considered a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3785; Pub. L. 113–66, div. A, title VIII, § 811(b), Dec. 26, 2013, 127 Stat. 806; Pub. L. 113–67, div. A, title VII, § 702(a)(1), Dec. 26, 2013, 127 Stat. 1189.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4304	41:256(e).	June 30, 1949, ch. 288, title III, § 306(e), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3310; Pub. L. 105–85, title VIII, § 808(b)(1), Nov. 18, 1997, 111 Stat. 1836.

AMENDMENTS

2013—Subsec. (a)(16). Pub. L. 113–66 and Pub. L. 113–67 amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''Costs of compensation of senior executives of contractors for a fiscal year, regardless of the contract funding source, to the extent that the compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator under section 1127 of this title.'' See Effective Date of 2013 Amendment notes below.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–67 applicable only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 702(c) of Pub. L. 113–67, set out as a note under section 2324 of Title 10, Armed Forces.

Amendment by Pub. L. 113–66 applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 811(d) of Pub. L. 113–66, set out as a note under section 2324 of Title 10, Armed Forces.

REPORTS

Pub. L. 113–67, div. A, title VII, § 702(d), Dec. 26, 2013, 127 Stat. 1189, provided that:

''(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the Director of the Office of Management and Budget shall submit a report on contractor compensation to—

''(A) the Committee on Armed Services of the Senate;

''(B) the Committee on Armed Services of the House of Representatives;

''(C) the Committee on Homeland Security and Governmental Affairs of the Senate;

''(D) the Committee on Oversight and Government Reform of the House of Representatives;

''(E) the Committee on Appropriations of the Senate; and

''(F) the Committee on Appropriations of the House of Representatives.

''(2) ELEMENTS.—The report required under paragraph (1) shall include—

''(A) the total number of contractor employees, by executive agency, in the narrowly targeted exception positions described under subsection (a) during the preceding fiscal year;

''(B) the taxpayer-funded compensation amounts received by each contractor employee in a narrowly targeted exception position during such fiscal year; and

''(C) the duties and services performed by contractor employees in the narrowly targeted exception positions during such fiscal year.''

REVISION OF COST PRINCIPLE RELATING TO ENTERTAINMENT, GIFT, AND RECREATION COSTS FOR CONTRACTOR EMPLOYEES

Pub. L. 103–355, title II, § 2192, Oct. 13, 1994, 108 Stat. 3315, provided that:

''(a) COSTS NOT ALLOWABLE.—(1) The costs of gifts or recreation for employees of a contractor or members of their families that are provided by the contractor to improve employee morale or performance or for any other purpose are not allowable under a covered contract unless, within 120 days after the date of the enactment of this Act [Oct. 13, 1994], the Federal Acquisition Regulatory Council prescribes amendments to the Federal Acquisition Regulation specifying circumstances under which such costs are allowable under a covered contract.

''(2) Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend the cost principle in the Federal Acquisition Regulation that is set out in section 31.205–14 of title 48, Code of Federal Regulations, relating to unallowability of entertainment costs—

''(A) by inserting in the cost principle a statement that costs made specifically unallowable under that cost principle are not allowable under any other cost principle; and

''(B) by striking out '(but see 31.205–1 and 31.205–13)'.

''(b) DEFINITIONS.—In this section:

''(1) The term 'employee' includes officers and directors of a contractor.

''(2) The term 'covered contract' has the meaning given such term in section 2324(*l*) of title 10, United States Code (as amended by section 2101(c) [2101(d)]), and section 306(*l*) of the Federal Property and Administrative Services Act of 1949 (as added by section 2151) [see 41 U.S.C. 4301(2)].

''(c) EFFECTIVE DATE.—Any amendments to the Federal Acquisition Regulation made pursuant to subsection (a) shall apply with respect to costs incurred after the date on which the amendments made by section 2101 apply (as provided in section 10001 [set out as an Effective Date of 1994 Amendment note under section 2302 of Title 10, Armed Forces]) or the date on which the amendments made by section 2151 apply (as provided in section 10001), whichever is later.''

EX. ORD. NO. 13494. ECONOMY IN GOVERNMENT CONTRACTING

Ex. Ord. No. 13494, Jan. 30, 2009, 74 F.R. 6101, as amended by Ex. Ord. No. 13517, § 2, Oct. 30, 2009, 74 F.R. 57239, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, it is hereby ordered that:

SECTION 1. To promote economy and efficiency in Government contracting, certain costs that are not directly related to the contractors' provision of goods and services to the Government shall be unallowable for payment, thereby directly reducing Government ex-

penditures. This order is also consistent with the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors. This order does not restrict the manner in which recipients of Federal funds may expend those funds.

SEC. 2. It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration of Government contracts, contracting departments and agencies, when they enter into, receive proposals for, or make disbursements pursuant to a contract as to which certain costs are treated as unallowable, shall treat as unallowable the costs of any activities undertaken to persuade employees—whether employees of the recipient of the Federal disbursements or of any other entity—to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing. Such unallowable costs shall be excluded from any billing, claim, proposal, or disbursement applicable to any such Federal Government contract.

SEC. 3. Contracting departments and agencies shall treat as allowable costs incurred in maintaining satisfactory relations between the contractor and its employees (other than the costs of any activities undertaken to persuade employees to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively), including costs of labor management committees, employee publications, and other related activities. See 48 C.F.R. 31.205–21.

SEC. 4. Examples of costs unallowable under section 2 of this order include the costs of the following activities, when they are undertaken to persuade employees to exercise or not to exercise, or concern the manner of exercising, rights to organize and bargain collectively:

(a) preparing and distributing materials;

(b) hiring or consulting legal counsel or consultants;

(c) holding meetings (including paying the salaries of the attendees at meetings held for this purpose); and

(d) planning or conducting activities by managers, supervisors, or union representatives during work hours.

SEC. 5. Within 150 days of the effective date of this order, the Federal Acquisition Regulatory Council (FAR Council) shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to carry out this order. Such rules, regulations, and orders shall minimize the costs of compliance for contractors and shall not interfere with the ability of contractors to engage in advocacy through activities for which they do not claim reimbursement.

SEC. 6. Each contracting department or agency shall cooperate with the FAR Council and provide such information and assistance as the FAR Council may require in the performance of its functions under this order.

SEC. 7. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 8. This order shall become effective immediately, and shall apply to contracts resulting from solicitations issued on or after the effective date of the action taken by the FAR Council under section 5 of this order.

BARACK OBAMA.

§ 4305. Required regulations

(a) IN GENERAL.—The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Those provisions shall define in detail and in specific terms the costs that are unallowable, in whole or in part, under covered contracts.

(b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(1) Air shows.

(2) Membership in civic, community, and professional organizations.

(3) Recruitment.

(4) Employee morale and welfare.

(5) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(6) Community relations.

(7) Dining facilities.

(8) Professional and consulting services, including legal services.

(9) Compensation.

(10) Selling and marketing.

(11) Travel.

(12) Public relations.

(13) Hotel and meal expenses.

(14) Expense of corporate aircraft.

(15) Company-furnished automobiles.

(16) Advertising.

(17) Conventions.

(c) ADDITIONAL REQUIREMENTS.—

(1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until the contracting officer has obtained—

(A) adequate documentation of those costs; and

(B) the opinion of the contract auditor on the allowability of those costs.

(2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, a contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.—The Federal Acquisition Regulation shall require that all categories of costs designated in the report of a contract auditor as questioned with respect to a proposal for settlement be resolved in a manner so that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3787.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4305(a)	41:256(f)(1) (1st, 2d sentences).	June 30, 1949, ch. 288, title III, § 306(f), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3312.
4305(b)	41:256(f)(1) (last sentence).	
4305(c)	41:256(f)(2)–(4).	

§ 4306. Applicability of regulations to subcontractors

The regulations referred to in sections 4304 and 4305(a) and (b) of this title shall require

prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of those regulations to all subcontractors of the covered contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4306	41:256(g).	June 30, 1949, ch. 288, title III, § 306(g), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3313.

§ 4307. Contractor certification

(a) CONTENT AND FORM.—A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. The certification shall be in a form prescribed in the Federal Acquisition Regulation.

(b) WAIVER.—An executive agency may, in an exceptional case, waive the requirement for certification under subsection (a) in the case of a contract if the agency—

(1) determines that it would be in the interest of the Federal Government to waive the certification; and

(2) states in writing the reasons for the determination and makes the determination available to the public.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4307	41:256(h).	June 30, 1949, ch. 288, title III, § 306(h), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3313.

§ 4308. Penalties for submission of cost known to be unallowable

The submission to an executive agency of a proposal for settlement of costs for any period after those costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that the cost is unallowable, is subject to section 287 of title 18 and section 3729 of title 31.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4308	41:256(i).	June 30, 1949, ch. 288, title III, § 306(i), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3313.

§ 4309. Burden of proof on contractor

In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Federal Government is in issue, the burden of proof is on the contractor to establish that those costs are reasonable.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4309	41:256(j).	June 30, 1949, ch. 288, title III, § 306(j), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3313.

§ 4310. Proceeding costs not allowable

(a) DEFINITIONS.—In this section:

(1) COSTS.—The term ''costs'', with respect to a proceeding, means all costs incurred by a contractor, whether before or after the commencement of the proceeding, including—

(A) administrative and clerical expenses;

(B) the cost of legal services, including legal services performed by an employee of the contractor;

(C) the cost of the services of accountants and consultants retained by the contractor; and

(D) the pay of directors, officers, and employees of the contractor for time devoted by those directors, officers, and employees to the proceeding.

(2) PENALTY.—The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(3) PROCEEDING.—The term ''proceeding'' includes an investigation.

(b) IN GENERAL.—Except as otherwise provided in this section, costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government, by a State, or by a contractor or grantee employee submitting a complaint under section 4712 of this title are not allowable as reimbursable costs under a covered contract if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation; and

(2) results in a disposition described in subsection (c).

(c) COVERED DISPOSITIONS.—A disposition referred to in subsection (b)(2) is any of the following:

(1) In a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 4712 of this title by reason of the violation or failure referred to in subsection (b).

(4) A final decision to do any of the following, by reason of the violation or failure referred to in subsection (b):

(A) Debar or suspend the contractor.

(B) Rescind or void the contract.

(C) Terminate the contract for default.

(5) A disposition of the proceeding by consent or compromise if the disposition could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

(d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY FEDERAL GOVERNMENT.—In the case of a proceeding referred to in subsection (b) that is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the Federal Government, the costs incurred by the contractor in connection with the proceeding that are otherwise not allowable as reimbursable costs under subsection (b) may be allowed to the extent specifically provided in that agreement.

(e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PROCEEDING COMMENCED BY STATE.—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the executive agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with the proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of—

(1) a specific term or condition of the contract; or

(2) specific written instructions of the executive agency.

(f) OTHER ALLOWABLE COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (3), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if the costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) AMOUNT OF ALLOWABLE COSTS.—

(A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that the costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) CONTENT OF REGULATIONS.—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the Federal Government as a party, and other factors as may be appropriate.

(3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—In the case of a proceeding referred to in paragraph (1), contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

(A) the proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and

(B) the costs of the other proceeding are not allowable under subsection (b).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3789; Pub. L. 112–239, div. A, title VIII, § 828(d), Jan. 2, 2013, 126 Stat. 1841.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4310(a)	41:256(k)(6).	June 30, 1949, ch. 288, title III, § 306(k), as added Pub. L. 100–700, § 8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103–355, title II, § 2151, Oct. 13, 1994, 108 Stat. 3313.
4310(b)	41:256(k)(1).	
4310(c)	41:256(k)(2).	
4310(d)	41:256(k)(3).	
4310(e)	41:256(k)(4).	
4310(f)	41:256(k)(5).	

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239, § 828(d)(1), substituted ''commenced by the Federal Government, by a State, or by a contractor or grantee employee submitting a complaint under section 4712 of this title'' for ''commenced by the Federal Government or a State''.

Subsec. (c)(3). Pub. L. 112–239, § 828(d)(2), substituted ''the imposition of a monetary penalty or an order to take corrective action under section 4712 of this title'' for ''the imposition of a monetary penalty''.

CHAPTER 45—CONTRACT FINANCING

Sec.
4501. Authority of executive agency.
4502. Payment.
4503. Security for advance payments.
4504. Conditions for progress payments.
4505. Payments for commercial items.
4506. Action in case of fraud.

§ 4501. Authority of executive agency

An executive agency may—

(1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3790.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4501	41:255(a).	June 30, 1949, ch. 288, title III, § 305(a), 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85–800, § 4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103–355, title II, § 2051(a)(2), (c), Oct. 13, 1994, 108 Stat. 3304.

RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103–355, title II, § 2051(f), Oct. 13, 1994, 108 Stat. 3306, provided that: ''The amendments made by this section [see Tables for classification] are not intended

to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.''

§ 4502. Payment

(a) BASIS FOR PAYMENT.—When practicable, payments under section 4501 of this title shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) PAYMENT AMOUNT.—Payments made under section 4501 of this title may not exceed the unpaid contract price.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4502(a)	41:255(b).	June 30, 1949, ch. 288, title III, § 305(b), as added Pub. L. 103–355, title II, § 2051(b), Oct. 13, 1994, 108 Stat. 3304.
4502(b)	41:255(c).	June 30, 1949, ch. 288, title III, § 305(c), 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85–800, § 4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103–355, title II, § 2051(a)(3), (5), Oct. 13, 1994, 108 Stat. 3304.

§ 4503. Security for advance payments

Advance payments under section 4501 of this title may be made only on adequate security and a determination by the agency head that to do so would be in the public interest. The security may be in the form of a lien in favor of the Federal Government on the property contracted for, on the balance in an account in which the payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the Federal Government.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4503	41:255(d).	June 30, 1949, ch. 288, title III, § 305(d), 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85–800, § 4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103–355, title II, § 2051(a)(4), (5), (d), Oct. 13, 1994, 108 Stat. 3304.

§ 4504. Conditions for progress payments

(a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall ensure that a payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for those payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide information and evidence the executive agency determines is necessary to permit the executive agency to carry out this subsection.

(b) LIMITATION.—The executive agency shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under the contract as long as the executive agency has not made the contractual terms, specifications, and price definite.

(c) APPLICATION.—This section applies to a contract in an amount greater than $25,000.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4504	41:255(e).	June 30, 1949, ch. 288, title III, § 305(e), as added Pub. L. 103–355, title II, § 2051(e), Oct. 13, 1994, 108 Stat. 3304, as amended Pub. L. 104–106, title XLIII, § 4321(a)(4), Feb. 10, 1996, 110 Stat. 671.

§ 4505. Payments for commercial items

(a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section 4501 of this title for commercial items may be made under terms and conditions that the head of the executive agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the Federal Government.

(b) SECURITY FOR PAYMENTS.—The head of the executive agency shall obtain adequate security for the payments. If the security is in the form of a lien in favor of the Federal Government, the lien is paramount to all other liens and is effective immediately on the first payment, without filing, notice, or other action by the Federal Government.

(c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made under section 4501 of this title for commercial items may include payments, in a total amount not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sections 4503 and 4504 of this title need not be applied if they would be inconsistent, as determined by the head of the executive agency, with commercial terms and conditions pursuant to this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4505	41:255(f).	June 30, 1949, ch. 288, title III, § 305(f), as added Pub. L. 103–355, title II, § 2051(e), Oct. 13, 1994, 108 Stat. 3304, as amended Pub. L. 104–106, title XLIII, § 4321(a)(4), Feb. 10, 1996, 110 Stat. 671.

§ 4506. Action in case of fraud

(a) DEFINITION.—In this section, the term ''remedy coordination official'', with respect to an executive agency, means the individual or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the executive agency reduce or suspend further payments to that contractor.

(c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an executive agency receiving a recommendation under subsection (b) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. On making an affirmative determination, the head of the executive agency may reduce or suspend further payments to the contractor under the contract.

(d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduction or suspension of payments by an executive agency under subsection (c) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the Federal Government resulting from the fraud.

(e) WRITTEN JUSTIFICATION.—A written justification for each decision of the head of an executive agency whether to reduce or suspend payments under subsection (c), and for each recommendation received by the executive agency in connection with the decision, shall be prepared and be retained in the files of the executive agency.

(f) NOTICE.—The head of each executive agency shall prescribe procedures to ensure that, before the head of the executive agency decides to reduce or suspend payments in the case of a contractor under subsection (c), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the executive agency in response to the proposed reduction or suspension.

(g) REVIEW.—Not later than 180 days after the date on which the head of an executive agency reduces or suspends payments to a contractor under subsection (c), the remedy coordination official of the executive agency shall—

(1) review the determination of fraud on which the reduction or suspension is based; and

(2) transmit a recommendation to the head of the executive agency whether the suspension or reduction should continue.

(h) REPORT.—The head of each executive agency who receives recommendations made by the remedy coordination official of the executive agency to reduce or suspend payments under subsection (c) during a fiscal year shall prepare for that year a report that contains the recommendations, the actions taken on the recommendations and the reasons for those actions, and an assessment of the effects of those actions on the Federal Government. The report shall be available to any Member of Congress on request.

(i) RESTRICTION ON DELEGATION.—The head of an executive agency may not delegate responsibilities under this section to an individual in a position below level IV of the Executive Schedule.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3792.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4506	41:255(g).	June 30, 1949, ch. 288, title III, § 305(g), as added Pub. L. 103–355, title II, § 2051(e), Oct. 13, 1994, 108 Stat. 3305, as amended Pub. L. 104–106, title XLIII, § 4321(a)(4), Feb. 10, 1996, 110 Stat. 671.

CHAPTER 47—MISCELLANEOUS

Sec.
4701. Determinations and decisions.
4702. Prohibition on release of contractor proposals.
4703. Validation of proprietary data restrictions.
4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government.
4705. Protection of contractor employees from reprisal for disclosure of certain information.
4706. Examination of facilities and records of contractor.
4707. Remission of liquidated damages.
4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions.
4709. Implementation of electronic commerce capability.
4710. Limitations on tiering of subcontractors.
4711. Linking of award and incentive fees to acquisition outcomes.
4712. Pilot program for enhancement of contractor protection from reprisal for disclosure of certain information.

AMENDMENTS

Pub. L. 112–239, div. A, title VIII, § 828(a)(2), Jan. 2, 2013, 126 Stat. 1840, added item 4712.

§ 4701. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—

(1) IN GENERAL.—Determinations and decisions required to be made under this division by the head of an executive agency or provided in this division or chapters 1 to 11 of title 40 to be made by the Administrator of General Services or other agency head may be made for an individual purchase or contract or, except for determinations or decisions made under sections 3105, 3301, 3303 to 3305, 3306(a)–(e), and 3308, chapter 37, and section 4702 of this title or to the extent expressly prohibited by another law, for a class of purchases or contracts.

(2) DELEGATION.—Except as provided in section 3304(a)(7) of this title, and except as provided in section 121(d)(1) and (2) of title 40 with respect to the Administrator of General Serv-

ices, the agency head, in the discretion and subject to the direction of the agency head, may delegate powers provided by this division or chapters 1 to 11 of title 40, including the making of determinations and decisions described in paragraph (1), to other officers or officials of the agency.

(3) FINALITY.—The determinations and decisions are final.

(b) WRITTEN FINDINGS.—

(1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title shall be based on a written finding by the individual making the determination or decision. A finding under section 4503 or 4706(d)(2)(B) shall set out facts and circumstances that support the determination or decision.

(2) FINALITY.—Each finding referred to in paragraph (1) is final.

(3) MAINTAINING COPIES OF FINDINGS.—The head of an executive agency shall maintain for a period of not less than 6 years a copy of each finding referred to in paragraph (1) that is made by an individual in that executive agency. The period begins on the date of the determination or decision to which the finding relates.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3793.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4701	41:257.	June 30, 1949, ch. 288, title III, § 307, 63 Stat. 396; Pub. L. 85–800, § 5, Aug. 28, 1958, 72 Stat. 967; Pub. L. 89–343, §§ 3, 4, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 98–369, title VII, § 2714(a)(4), July 18, 1984, 98 Stat. 1184; Pub. L. 104–106, title XLIII, § 4321(e)(6), Feb. 10, 1996, 110 Stat. 675; Pub. L. 104–316, title I, § 121(c), Oct. 19, 1996, 110 Stat. 3836.
	41:262.	June 30, 1949, ch. 288, title III, § 312, as added Pub. L. 103–355, title I, § 1553, Oct. 13, 1994, 108 Stat. 3300.

§ 4702. Prohibition on release of contractor proposals

(a) DEFINITION.—In this section, the term ''proposal'' means a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) PROHIBITION.—A proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5.

(c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3794.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4702(a)	41:253b(m)(3).	June 30, 1949, ch. 288, title III, § 303B(m), as added Pub. L. 104–201, title VIII, § 821(b), Sept. 23, 1996, 110 Stat. 2609.
4702(b)	41:253b(m)(1).	
4702(c)	41:253b(m)(2).	

In subsection (b), the words ''Except as provided in paragraph (2)'' are omitted as unnecessary.

§ 4703. Validation of proprietary data restrictions

(a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—A contract for property or services entered into by an executive agency that provides for the delivery of technical data shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction the contractor or subcontractor asserts on the right of the Federal Government to use the data; and

(2) the contracting officer may review the validity of a restriction the contractor or subcontractor asserts under the contract on the right of the Federal Government to use technical data furnished to the Federal Government under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the Federal Government would make it impracticable to procure the item competitively at a later time.

(b) CHALLENGE OF RESTRICTION.—If after a review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. The notice shall state—

(1) the grounds for challenging the asserted restriction; and

(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

(c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, the contracting officer shall provide appropriate additional time to adequately permit the justification to be submitted.

(d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the earliest challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with

an equitable opportunity to respond to each challenge.

(e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

(1) NO RESPONSE SUBMITTED.—The contracting officer shall issue a decision pertaining to the validity of the asserted restriction if the contractor or subcontractor does not submit a response under subsection (b).

(2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justification submitted in response to the notice provided pursuant to subsection (b), a contracting officer shall issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) CLAIM DEEMED CLAIM WITHIN CHAPTER 71.—A claim pertaining to the validity of the asserted restriction that is submitted in writing to a contracting officer by a contractor or subcontractor at any tier is deemed to be a claim within the meaning of chapter 71 of this title.

(g) FINAL DISPOSITION OF CHALLENGE.—

(1) CHALLENGE IS SUSTAINED.—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is sustained on final disposition—

(A) the restriction is cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, is liable to the Federal Government for payment of the cost to the Federal Government of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the Federal Government in challenging the asserted restriction, unless special circumstances would make the payment unjust.

(2) CHALLENGE NOT SUSTAINED.—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is not sustained on final disposition, the Federal Government—

(A) continues to be bound by the restriction; and

(B) is liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Federal Government is found not to be made in good faith.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3794.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4703(a)	41:253d(a).	June 30, 1949, ch. 288, title III, § 303D, formerly § 303E, as added Pub. L. 98–577, title II, § 203(a), Oct. 30, 1984, 98 Stat. 3071; renumbered § 303D, Pub. L. 99–145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.
4703(b)	41:253d(b).	
4703(c)	41:253d(c) (1st sentence).	
4703(d)	41:253d(c) (last sentence).	
4703(e)	41:253d(d).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4703(f)	41:253d(e).	
4703(g)	41:253d(f).	

§ 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government

(a) CONTRACT RESTRICTIONS.—Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not—

(1) enter into an agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the Federal Government of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales described in paragraph (1) to the Federal Government.

(b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.

(d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO OTHER PURCHASERS.—An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under the contract that restricts sales by the subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the Federal Government in violation of the provision included in the contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of the commercial items from that subcontractor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3795.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4704(a)	41:253g(a).	June 30, 1949, ch. 288, title III, § 303G(a), (b), formerly § 303H, as added Pub. L. 98–577, title II, § 206(a), Oct. 30, 1984, 98 Stat. 3073; renumbered § 303G, Pub. L. 99–145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.
4704(b)	41:253g(b).	
4704(c)	41:253g(c).	June 30, 1949, ch. 288, title III, § 303G(c), as added Pub. L. 103–355, title IV, § 4103(b), Oct. 13, 1994, 108 Stat. 3341.
4704(d)	41:253g(d).	June 30, 1949, ch. 288, title III, § 303G(d), as added Pub. L. 103–355, title VIII, § 8204(a), Oct. 13, 1994, 108 Stat. 3396.

§ 4705. Protection of contractor employees from reprisal for disclosure of certain information

(a) DEFINITIONS.—In this section:

(1) CONTRACT.—The term ''contract'' means a contract awarded by the head of an executive agency.

(2) CONTRACTOR.—The term ''contractor'' means a person awarded a contract with an executive agency.

(3) INSPECTOR GENERAL.—The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C. App.).

(b) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for, or negotiation of, a contract).

(c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the individual has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, on completion of the investigation, submit a report of the findings of the investigation to the individual, the contractor concerned, and the head of the agency. If the executive agency does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

(d) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head of an executive agency determines that a contractor has subjected an individual to a reprisal prohibited by subsection (b), the head of the executive agency may take one or more of the following actions:

(A) ABATEMENT.—Order the contractor to take affirmative action to abate the reprisal.

(B) REINSTATEMENT.—Order the contractor to reinstate the individual to the position that the individual held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the individual in that position if the reprisal had not been taken.

(C) PAYMENT.—Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that the complainant reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) ENFORCEMENT ORDER.—When a contractor fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of the order in the United States district court for a district in which the reprisal was found to have occurred. In an action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. A petition seeking review must be filed no more than 60 days after the head of the agency issues the order. Review shall conform to chapter 7 of title 5.

(e) SCOPE OF SECTION.—This section does not—

(1) authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

(f) FOUR-YEAR SUSPENSION OF EFFECTIVENESS WHILE PILOT PROGRAM IS IN EFFECT.—While section 4712 of this title is in effect, this section shall not be in effect.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3796; Pub. L. 112–239, div. A, title VIII, § 828(c), Jan. 2, 2013, 126 Stat. 1841.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4705(a)	41:265(e).	June 30, 1949, ch. 288, title III, § 315, as added Pub. L. 103–355, title VI, § 6006, Oct. 13, 1994, 108 Stat. 3365; Pub. L. 104–106, title XLIII, § 4321(e)(8), Feb. 10, 1996, 110 Stat. 675.
4705(b)	41:265(a).	
4705(c)	41:265(b).	
4705(d)	41:265(c).	
4705(e)	41:265(d).	

In subsection (d)(2), the word ''contractor'' is substituted for ''person'' for clarity and for consistency with subsection (d)(1).

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(3), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2013—Subsec. (f). Pub. L. 112–239 added subsec. (f).

§ 4706. Examination of facilities and records of contractor

(a) DEFINITION.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) AGENCY AUTHORITY.—

(1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an executive agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable con-

tract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of those subcontracts, under a contract referred to in subparagraph (A).

(2) EXAMINATION OF RECORDS.—The head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 35 of this title with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(c) SUBPOENA POWER.—

(1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Inspector General of an executive agency appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, on request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (b).

(2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of contumacy or refusal to obey, is enforceable by order of an appropriate United States district court.

(3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may not be delegated.

(4) REPORT.—In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the exercise of the authority during the preceding year and the reasons why the authority was exercised in any instance.

(d) AUTHORITY OF COMPTROLLER GENERAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and representatives of the Comptroller General may examine records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding the transactions.

(2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the executive agency concerned determines, with the concurrence of the Comptroller General or the designee of the Comptroller General, that applying paragraph (1) to the contract or subcontract would not be in the public interest. The concurrence of the Comptroller General or the designee is not required when—

(A) the contractor or subcontractor is—

(i) the government of a foreign country or an agency of that government; or

(ii) precluded by the laws of the country involved from making its records available for examination; and

(B) the executive agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not require a contractor or subcontractor to create or maintain a record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another law.

(e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An executive agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by another department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(f) EXPIRATION OF AUTHORITY.—The authority of an executive agency under subsection (b) and the authority of the Comptroller General under subsection (d) shall expire 3 years after final payment under the contract or subcontract.

(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is not greater than the simplified acquisition threshold.

(h) ELECTRONIC FORM ALLOWED.—This section does not preclude a contractor from duplicating or storing original records in electronic form.

(i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or subcontractor has established procedures to ensure that the im-

aging process preserves the integrity, reliability, and security of the original records.

(2) INDEXING SYSTEM MAINTAINED.—The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) ORIGINAL RECORDS RETAINED.—The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3797.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4706(a)	41:254d(i).	June 30, 1949, ch. 288, title III, § 304C(a)(1), (b), (g)–(i), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3318, 3320.
4706(b)(1)	41:254d(a)(1).	
4706(b)(2)	41:254d(a)(2).	June 30, 1949, ch. 288, title III, § 304C(a)(2), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3318; Pub. L. 104–106, title XLIII, § 4321(e)(5), Feb. 10, 1996, 110 Stat. 675.
4706(c)	41:254d(b).	
4706(d)	41:254d(c).	June 30, 1949, ch. 288, title III, § 304C(c), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3319; Pub. L. 110–417, title VIII, § 871(a), Oct. 14, 2008, 122 Stat.4555.
4706(e)	41:254d(d).	June 30, 1949, ch. 288, title III, § 304C(d), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3319; Pub. L. 104–201, title VIII, § 808(b), Sept. 23, 1996, 110 Stat. 2607.
4706(f)	41:254d(e).	
4706(g)	41:254d(f).	June 30, 1949, ch. 288, title III, § 304C(f), as added and amended Pub. L. 103–355, title II, § 2251(a), title IV, § 4103(d), Oct. 13, 1994, 108 Stat. 3320, 3341.
4706(h)	41:254d(g).	
4706(i)	41:254d(h).	

In subsection (c)(4), the words ''Committee on Oversight and Government Reform'' are substituted for ''Committee on Government Operations'' on authority of section 1(a)(6) of Public Law 104–14 (2 U.S.C. note prec. 21), Rule X(1)(h) of the Rules of the House of Representatives, adopted by House Resolution No. 5 (106th Congress, January 6, 1999), and Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007). The words ''Committee on Homeland Security and Governmental Affairs'' are substituted for ''Committee on Governmental Affairs'' on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004).

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (c)(1), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 4707. Remission of liquidated damages

When a contract made on behalf of the Federal Government by the head of a Federal agency, or by an authorized officer of the agency, includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation of the head of the agency may remit any part of the damages as the Secretary of the Treasury believes is just and equitable.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3799.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4707	41:256a.	Sept. 5, 1950, ch. 849, § 10(a), 64 Stat. 591; Pub. L. 104–316, title II, § 202(u), Oct. 19, 1996, 110 Stat. 3845.

§ 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions

A cost-type research and development contract (including a grant) with a university, college, or other educational institution may provide for payment of reimbursable indirect costs on the basis of predetermined fixed-percentage rates applied to the total of the reimbursable direct costs incurred or to an element of the total of the reimbursable direct costs incurred.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3799.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4708	41:254a.	Pub. L. 87–638, Sept. 5, 1962, 76 Stat. 437.

The words ''On and after September 5, 1962'' are omitted as obsolete.

§ 4709. Implementation of electronic commerce capability

(a) ROLE OF HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall implement the electronic commerce capability required by section 2301 of this title. In implementing the capability, the head of an executive agency shall consult with the Administrator.

(b) PROGRAM MANAGER.—The head of each executive agency shall designate a program manager to implement the electronic commerce capability for the agency. The program manager reports directly to an official at a level not lower than the senior procurement executive designated for the agency under section 1702(c) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3800.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4709	41:252c.	June 30, 1949, ch. 288, title III, § 302C, as added Pub. L. 103–355, title IX, § 9003, Oct. 13, 1994, 108 Stat. 3403; Pub. L. 105–85, title VIII, § 850(f)(4)(A), Nov. 18, 1997, 111 Stat. 1850.

§ 4710. Limitations on tiering of subcontractors

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) REGULATIONS.—For executive agencies other than the Department of Defense, the Federal Acquisition Regulation shall—

(1) require contractors to minimize the excessive use of subcontractors, or of tiers of subcontractors, that add no or negligible value; and

(2) ensure that neither a contractor nor a subcontractor receives indirect costs or profit

on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value (but not to limit charges for indirect costs and profit based on the direct costs of managing lower-tier subcontracts).

(c) COVERED CONTRACTS.—This section applies to any cost-reimbursement type contract or task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 134 of this title).

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the ability of the Department of Defense to implement more restrictive limitations on the tiering of subcontractors.

(e) APPLICABILITY.—The Department of Defense shall continue to be subject to guidance on limitations on tiering of subcontractors issued by the Department of Defense pursuant to section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2324 note).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3800.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4710	41:254b note.	Pub. L. 110–417, [div. A], title VIII, § 866, Oct. 14, 2008, 122 Stat. 4551.

In subsection (b), the words ''Not later than one year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The word ''shall'' is substituted for the words ''shall be amended'' to reflect the permanence of the provision.

§ 4711. Linking of award and incentive fees to acquisition outcomes

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) GUIDANCE FOR EXECUTIVE AGENCIES ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—The Federal Acquisition Regulation shall provide executive agencies other than the Department of Defense with instructions, including definitions, on the appropriate use of award and incentive fees in Federal acquisition programs.

(c) ELEMENTS.—The regulations under subsection (b) shall—

(1) ensure that all new contracts using award fees link the fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be ''excellent'' or ''superior'' and the percentage of the available award fee which contractors should be paid for the performance;

(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be ''acceptable'', ''average'', ''expected'', ''good'', or ''satisfactory'';

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the Federal Government;

(8) ensure that each executive agency—

(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate the data on a regular basis;

(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

(d) GUIDANCE FOR DEPARTMENT OF DEFENSE.—The Department of Defense shall continue to be subject to guidance on award and incentive fees issued by the Secretary of Defense pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2302 note).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3800.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4711	41:251 note.	Pub. L. 110–417, [div. A], title VIII, § 867, Oct. 14, 2008, 122 Stat. 4551.

In subsection (b), the words ''Not later than 1 year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The words ''shall provide'' are substituted for ''shall be amended to provide'' to reflect the permanence of the provision.

§ 4712. Pilot program for enhancement of contractor protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—

(1) IN GENERAL.—An employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

(2) PERSONS AND BODIES COVERED.—The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) A Federal employee responsible for contract or grant oversight or management at the relevant agency.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

(3) RULES OF CONSTRUCTION.—For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor, subcontractor, or grantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) INVESTIGATION OF COMPLAINTS.—

(1) SUBMISSION OF COMPLAINT.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor or grantee concerned, and the head of the agency.

(2) INSPECTOR GENERAL ACTION.—

(A) DETERMINATION OR SUBMISSION OF REPORT ON FINDINGS.—Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) EXTENSION OF TIME.—If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) PROHIBITION ON DISCLOSURE.—The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) TIME LIMITATION.—A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the executive agency concerned shall determine whether there is sufficient basis to conclude that the contractor or grantee concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor or grantee to take affirmative action to abate the reprisal.

(B) Order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor or grantee to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) EXHAUSTION OF REMEDIES.—If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor or grantee to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two

years after the date on which remedies are deemed to have been exhausted.

(3) ADMISSIBILITY OF EVIDENCE.—An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) ENFORCEMENT OF ORDERS.—Whenever a person fails to comply with an order issued under paragraph (1), the head of the executive agency concerned shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the executive agency.

(5) JUDICIAL REVIEW.—Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the executive agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an executive agency, unless a stay is specifically entered by the court.

(6) BURDENS OF PROOF.—The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an executive agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

(7) RIGHTS AND REMEDIES NOT WAIVABLE.—The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) NOTIFICATION OF EMPLOYEES.—The head of each executive agency shall ensure that contractors, subcontractors, and grantees of the agency inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

(e) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(f) EXCEPTIONS.—(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, or grantee of an element of the intelligence community if such disclosure—

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

(g) DEFINITIONS.—In this section:

(1) The term ''abuse of authority'' means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract or grant of such agency.

(2) The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts or grants awarded for or on behalf of, the executive agency concerned.

(h) CONSTRUCTION.—Nothing in this section, or the amendments made by this section,[1] shall be construed to provide any rights to disclose classified information not otherwise provided by law.

(i) DURATION OF SECTION.—This section shall be in effect for the four-year period beginning on the date of that is 180 days after the date the enactment of this section.[2]

(Added Pub. L. 112–239, div. A, title VIII, § 828(a)(1), Jan. 2, 2013, 126 Stat. 1837; amended Pub. L. 113–66, div. A, title X, § 1091(e), Dec. 26, 2013, 127 Stat. 876.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (g)(2), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of this section, referred to in subsec. (i), is the date of the enactment of Pub. L. 112–239, which was approved Jan. 2, 2013.

AMENDMENTS

2013—Subsec. (i). Pub. L. 113–66 inserted ''that is 180 days after the date'' before ''the enactment''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title VIII, § 828(b), Jan. 2, 2013, 126 Stat. 1840, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [enacting this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 2, 2013], and shall, during the period section 4712 of title 41, United States Code, as added by such subsection, is in effect, apply to—

''(A) all contracts and grants awarded on or after such date;

''(B) all task orders entered on or after such date pursuant to contracts awarded before, on, or after such date; and

''(C) all contracts awarded before such date that are modified to include a contract clause providing for the applicability of such amendments.

''(2) REVISION OF FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to implement the requirements arising under the amendments made by this section [enacting this section and amending sections 4310 and 4705 of this title].

''(3) INCLUSION OF CONTRACT CLAUSE IN CONTRACTS AWARDED BEFORE EFFECTIVE DATE.—At the time of any major modification to a contract that was awarded be-

[1] So in original.

[2] So in original. Probably should be ''date that is 180 days after the date of the enactment of this section.''

fore the date that is 180 days after the date of the enactment of this Act [Jan. 2, 2013], the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section to the contract.''

Subtitle II—Other Advertising and Contract Provisions

Chapter		Sec.
61.	**Advertising**	**6101**
63.	**General Contract Provisions**	**6301**
65.	**Contracts for Materials, Supplies, Articles, and Equipment Exceeding $10,000**	**6501**
67.	**Service Contract Labor Standards**	**6701**

CHAPTER 61—ADVERTISING

Sec.
6101. Advertising requirement for Federal Government purchases and sales.
6102. Exceptions from advertising requirement.
6103. Opening of bids.

§ 6101. Advertising requirement for Federal Government purchases and sales

(a) DEFINITIONS.—In this section—

(1) APPROPRIATION.—The term ''appropriation'' includes amounts made available by legislation under section 9104 of title 31.

(2) FEDERAL GOVERNMENT.—The term ''Federal Government'' includes the government of the District of Columbia.

(b) PURCHASES.—

(1) IN GENERAL.—Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Federal Government may be made or entered into only after advertising for proposals for a sufficient time.

(2) LIMITATIONS ON APPLICABILITY.—Paragraph (1) does not apply when—

(A) the amount involved in any one case does not exceed $25,000;

(B) public exigencies require the immediate delivery of articles or performance of services;

(C) only one source of supply is available and the Federal Government purchasing or contracting officer so certifies; or

(D) services are required to be performed by a contractor in person and are—

(i) of a technical and professional nature; or

(ii) under Federal Government supervision and paid for on a time basis.

(c) SALES.—Except when otherwise authorized by law or when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Federal Government are governed by the requirements of this section for advertising.

(d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—For wholly owned Government corporations, this section applies only to administrative transactions.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3801.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6101(a)	41:5a.	Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.
6101(b)–(d)	41:5.	R.S. § 3709; Aug. 2, 1946, ch. 744, § 9(a), (c), 60 Stat. 809; June 30, 1949, ch. 288, title VI, § 602(f), formerly title V, § 502(e), 63 Stat. 403, renumbered title VI, § 602(f), Sept. 5, 1950, ch. 849, §§ 6(a), (b), 8(c), 64 Stat. 583, 591; Pub. L. 85–800, § 7, Aug. 28, 1958, 72 Stat. 967; Pub. L. 93–356, § 1, July 25, 1974, 88 Stat. 390; Pub. L. 98–191, § 9(b), Dec. 1, 1983, 97 Stat. 1332.

In subsection (a), before paragraph (1), the words ''In this section'' are substituted for ''as used in this Act'' as the probable intent of Congress. Section 9(a) of the Act of August 2, 1946 (ch. 744, 60 Stat. 809) restated 41:5 generally and section 9(c) of the Act, an independent provision, was editorially added as the last paragraph of 41:5. The definitions which apply to ''as used in this Act'' are probably intended to apply also to 41:5 as restated by the Act. The definitions for ''department'' and ''continental United States'' are omitted because those terms do not appear in 41:5. In paragraph (1), the words ''section 9104 of title 31'' are substituted for ''section 104 of the Government Corporation Control Act, approved December 6, 1945'' because of section 4(b) of Public Law. 97–258 (31 U.S.C. note prec. 101). In paragraphs (1) and (2), the word ''includes'' is substituted for ''shall be construed to include'' and for ''shall be construed as including'', respectively, to eliminate unnecessary words.

In subsection (c), the words ''as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638)'' in section 3709 of the Revised Statutes are omitted because section 29 was repealed by section 602(a)(1) of the Federal Property and Administrative Services Act of 1949 (ch. 288, 63 Stat. 399).

§ 6102. Exceptions from advertising requirement

(a) AMERICAN BATTLE MONUMENTS COMMISSION.—Section 6101 of this title does not apply to the American Battle Monuments Commission with respect to leases in foreign countries for office or garage space.

(b) BUREAU OF INTERPARLIAMENTARY UNION FOR PROMOTION OF INTERNATIONAL ARBITRATION.—Section 6101 of this title does not apply to the Bureau of Interparliamentary Union for Promotion of International Arbitration with respect to necessary stenographic reporting services by contract.

(c) DEPARTMENT OF STATE.—Section 6101 of this title does not apply to the Department of State when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section 6101 of this title does not apply to the International Committee of Aerial Legal Experts with respect to necessary stenographic and other services by contract.

(e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market according to common business practice, without compliance with section 6101 of this title, when the aggregate amount of the purchase or the service does not exceed $25,000 in any instance.

(f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and other forest products produced by Indian enterprises from forests on Indian reservations may be sold under regulations the Secretary of the Interior prescribes, without compliance with section 6101 of this title.

(g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not apply to purchases and contracts for supplies or services for any office of the House of Representatives.

(h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congressional Budget Office may enter into agreements or contracts without regard to section 6101 of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3802.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6102(a)	41:6a(a).	Oct. 10, 1940, ch. 851, § 2(a), 54 Stat. 1110; Oct. 31, 1951, ch. 654, § 3(8), 65 Stat. 708.
6102(b)	41:6a(f).	Oct. 10, 1940, ch. 851, § 2(f), (j), 54 Stat. 1110.
6102(c)	41:6a(h).	Oct. 10, 1940, ch. 851, § 2(h), 54 Stat. 1110; Oct. 31, 1951, ch. 654, § 3(9), 65 Stat. 708.
6102(d)	41:6a(j).	
6102(e)	41:6a–1.	Pub. L. 89–90, (2d par. on p. 276), July 27, 1965, 79 Stat. 276; Pub. L. 93–356, § 2, July 25, 1974, 88 Stat. 390; Pub. L. 98–191, § 9(c), Dec. 1, 1983, 97 Stat. 1332.
6102(f)	41:6b(d).	June 24, 1940, ch. 412, 54 Stat. 504.
6102(g)	41:6a–3.	Pub. L. 108–7, div. H, title I, §§ 104, 1102, Feb. 20, 2003, 117 Stat. 354, 370.
6102(h)	41:6a–4.	

In subsections (a)–(d), the words ''under any appropriation Act'' are omitted as unnecessary.

In subsection (e), the words ''On and after July 27, 1965'' are omitted as unnecessary. The words ''according to common business practice'' are substituted for ''in the manner common among businessmen'' for consistency in the revised title.

In subsection (g), the words ''in any fiscal year'' are omitted as unnecessary.

In subsection (h), the text of 41:6a–4(b) is omitted as unnecessary.

§ 6103. Opening of bids

Whenever proposals for supplies have been solicited, the parties responding to the solicitation shall be notified of the time and place of the opening of the bids, and be permitted to be present either in person or by attorney. A record of each bid shall be made at the time and place of the opening of the bids.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3803.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6103	41:8.	R.S. § 3710.

CHAPTER 63—GENERAL CONTRACT PROVISIONS

Sec.
6301. Authorization requirement.
6302. Contracts for fuel made by Secretary of the Army.
6303. Certain contracts limited to appropriated amounts.
6304. Certain contracts limited to one-year term.
6305. Prohibition on transfer of contract and certain allowable assignments.
6306. Prohibition on Members of Congress making contracts with Federal Government.
6307. Contracts with Federal Government-owned establishments and availability of appropriations.
6308. Contracts for transportation of Federal Government securities.
6309. Honorable discharge certificate in lieu of birth certificate.

EX. ORD. NO. 13658. ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

Ex. Ord. No. 13658, Feb. 12, 2014, 79 F.R. 9851, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act [of 1949], 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in procurement by contracting with sources who adequately compensate their workers, it is hereby ordered as follows:

SECTION 1. *Policy*. This order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to $10.10 the hourly minimum wage paid by those contractors. Raising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs. These savings and quality improvements will lead to improved economy and efficiency in Government procurement.

SEC. 2. *Establishing a minimum wage for Federal contractors and subcontractors*. (a) Executive departments and agencies (agencies) shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts''), as described in section 7 of this order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of the contract or any subcontract thereunder, shall be at least:

(i) $10.10 per hour beginning January 1, 2015; and

(ii) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The amount shall be published by the Secretary at least 90 days before such new minimum wage is to take effect and shall be:

(A) not less than the amount in effect on the date of such determination;

(B) increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(C) rounded to the nearest multiple of $0.05.

(b) In calculating the annual percentage increase in the Consumer Price Index for purposes of subsection (a)(ii)(B) of this section, the Secretary shall compare such Consumer Price Index for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect pursuant to subsection (a)(ii)(B)) with the Consumer Price Index for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively.

(c) Nothing in this order shall excuse noncompliance with any applicable Federal or State prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this order.

SEC. 3. *Application to tipped workers*. (a) For workers covered by section 2 of this order who are tipped employees pursuant to 29 U.S.C. 203(t), the hourly cash

wage that must be paid by an employer to such workers shall be at least:

(i) $4.90 an hour, beginning on January 1, 2015;

(ii) for each succeeding 1-year period until the hourly cash wage under this section equals 70 percent of the wage in effect under section 2 of this order for such period, an hourly cash wage equal to the amount determined under this section for the preceding year, increased by the lesser of:

(A) $0.95; or

(B) the amount necessary for the hourly cash wage under this section to equal 70 percent of the wage under section 2 of this order; and

(iii) for each subsequent year, 70 percent of the wage in effect under section 2 for such year rounded to the nearest multiple of $0.05.

(b) Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to the minimum wage under section 2 of this order, the cash wage paid by the employer, as set forth in this section for those workers, shall be increased such that their wages equal the minimum wage under section 2 of this order. Consistent with applicable law, if the wage required to be paid under the Service Contract Act [of 1965], 41 U.S.C. 6701 *et seq.*, or any other applicable law or regulation is higher than the wage required by section 2, the employer shall pay additional cash wages sufficient to meet the highest wage required to be paid.

SEC. 4. *Regulations and Implementation*. (a) The Secretary shall issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act, to implement the requirements of this order, including providing exclusions from the requirements set forth in this order where appropriate. To the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council shall issue regulations in the Federal Acquisition Regulation to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to this order.

(b) Within 60 days of the Secretary issuing regulations pursuant to subsection (a) of this section, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts as described in section 7(d)(i)(C) and (D) of this order, entered into after January 1, 2015, consistent with the effective date of such agency action, comply with the requirements set forth in sections 2 and 3 of this order.

(c) Any regulations issued pursuant to this section should, to the extent practicable and consistent with section 8 of this order, incorporate existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act [of 1938], 29 U.S.C. 201 *et seq.*; the Service Contract Act, 41 U.S.C. 6701 *et seq.*; and the Davis-Bacon Act, 40 U.S.C. 3141 *et seq*.

SEC. 5. *Enforcement*. (a) The Secretary shall have the authority for investigating potential violations of and obtaining compliance with this order.

(b) This order creates no rights under the Contract Disputes Act [of 1978], and disputes regarding whether a contractor has paid the wages prescribed by this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to this order.

SEC. 6. *Severability*. If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) This order shall apply only to a new contract or contract-like instrument, as defined by the Secretary in the regulations issued pursuant to section 4(a) of this order, if:

(i)(A) it is a procurement contract for services or construction;

(B) it is a contract or contract-like instrument for services covered by the Service Contract Act;

(C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or

(D) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(ii) the wages of workers under such contract or contract-like instrument are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(e) For contracts or contract-like instruments covered by the Service Contract Act or the Davis-Bacon Act, this order shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the Fair Labor Standards Act, this order shall apply only to contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to this order pursuant to regulations or actions taken under section 4 of this order.

(f) This order shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended; or any contracts or contract-like instruments expressly excluded by the regulations issued pursuant to section 4(a) of this order.

(g) Independent agencies are strongly encouraged to comply with the requirements of this order.

SEC. 8. *Effective Date*. (a) This order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued on or after:

(i) January 1, 2015, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 4(a) of this order; or

(ii) for contracts where an agency action is taken pursuant to section 4(b) of this order, January 1, 2015, consistent with the effective date for such action.

(b) This order shall not apply to contracts or contract-like instruments entered into pursuant to solicitations issued on or before the effective date for the relevant action taken pursuant to section 4 of this order.

(c) For all new contracts and contract-like instruments negotiated between the date of this order and the effective dates set forth in this section, agencies are strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts and contract-like instruments are paid an hourly wage of at least $10.10 (as set forth under sections 2 and 3 of this order) as of the effective dates set forth in this section.

BARACK OBAMA.

EX. ORD. NO. 13706. ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

Ex. Ord. No. 13706, Sept. 7, 2015, 80 F.R. 54697, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to promote economy and efficiency in procurement by contracting with sources that allow their employees to earn paid sick leave, it is hereby ordered as follows:

SECTION 1. *Policy*. This order seeks to increase efficiency and cost savings in the work performed by parties that contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid leave allowing for family care. Providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring benefits packages at Federal contractors in line with model employers, ensuring that they remain competitive employers in the search for dedicated and talented employees. These savings and quality improvements will lead to improved economy and efficiency in Government procurement.

SEC. 2. *Establishing paid sick leave for Federal contractors and subcontractors*. (a) Executive departments and agencies (agencies) shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts''), as described in section 6 of this order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that all employees, in the performance of the contract or any subcontract thereunder, shall earn not less than 1 hour of paid sick leave for every 30 hours worked.

(b) A contractor may not set a limit on the total accrual of paid sick leave per year, or at any point in time, at less than 56 hours.

(c) Paid sick leave earned under this order may be used by an employee for an absence resulting from:

(i) physical or mental illness, injury, or medical condition;

(ii) obtaining diagnosis, care, or preventive care from a health care provider;

(iii) caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care described in paragraphs (i) or (ii) of this subsection or is otherwise in need of care; or

(iv) domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes otherwise described in paragraphs (i) and (ii) of this subsection, to obtain additional counseling, to seek relocation, to seek assistance from a victim services organization, to take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or to assist an individual related to the employee as described in paragraph (iii) of this subsection in engaging in any of these activities.

(d) Paid sick leave accrued under this order shall carry over from 1 year to the next and shall be reinstated for employees rehired by a covered contractor within 12 months after a job separation.

(e) The use of paid sick leave cannot be made contingent on the requesting employee finding a replacement to cover any work time to be missed.

(f) The paid sick leave required by this order is in addition to a contractor's obligations under 41 U.S.C. chapter 67 (Service Contract Act [of 1965]) and 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act), and contractors may not receive credit toward their prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of this order.

(g) A contractor's existing paid leave policy provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations, if applicable, and made available to all covered employees will satisfy the requirements of this order if the amount of paid leave is sufficient to meet the requirements of this section and if it may be used for the same purposes and under the same conditions described herein.

(h) Paid sick leave shall be provided upon the oral or written request of an employee that includes the expected duration of the leave, and is made at least 7 calendar days in advance where the need for the leave is foreseeable, and in other cases as soon as is practicable.

(i) Certification.

(i) A contractor may only require certification issued by a health care provider for paid sick leave used for the purposes listed in subsections (c)(i), (c)(ii), or (c)(iii) of this section for employee absences of 3 or more consecutive workdays, to be provided no later than 30 days from the first day of the leave.

(ii) If 3 or more consecutive days of paid sick leave is used for the purposes listed in subsection (c)(iv) of this section, documentation may be required to be provided from an appropriate individual or organization with the minimum necessary information establishing a need for the employee to be absent from work. The contractor shall not disclose any verification information and shall maintain confidentiality about the domestic violence, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(j) Nothing in this order shall require a covered contractor to make a financial payment to an employee upon a separation from employment for accrued sick leave that has not been used, but unused leave is subject to reinstatement as prescribed in subsection (d) of this section.

(k) A covered contractor may not interfere with or in any other manner discriminate against an employee for taking, or attempting to take, paid sick leave as provided for under this order or in any manner asserting, or assisting any other employee in asserting, any right or claim related to this order.

(l) Nothing in this order shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under this order.

SEC. 3. *Regulations and Implementation*. (a) The Secretary of Labor (Secretary) shall issue such regulations by September 30, 2016, as are deemed necessary and appropriate to carry out this order, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, including providing exclusions from the requirements set forth in this order where appropriate; defining terms used in this order; and requiring contractors to make, keep, and preserve such employee records as the Secretary deems necessary and appropriate for the enforcement of the provisions of this order or the regulations thereunder. To the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council shall issue regulations in the Federal Acquisition Regulation to provide for inclusion in Federal procurement solicitations and contracts subject to this order the contract clause described in section 2(a) of this order.

(b) Within 60 days of the Secretary issuing regulations pursuant to subsection (a) of this section, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts as described in section 6(d)(i)(C) and (D) of this order, entered into after January 1, 2017, consistent with the effective date of such agency action, comply with the requirements set forth in section 2 of this order.

(c) Any regulations issued pursuant to this section should, to the extent practicable and consistent with section 7 of this order, incorporate existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act [of 1938], 29 U.S.C. 201 *et seq*.; the Service Contract Act; the Davis-Bacon Act; the Family and Medical Leave Act [of 1993], 29 U.S.C. 2601 *et seq*.; the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq*.; and Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors.

SEC. 4. *Enforcement*. (a) The Secretary shall have the authority for investigating potential violations of and

obtaining compliance with this order, including the prohibitions on interference and discrimination in section 2(k) of this order.

(b) This order creates no rights under the Contract Disputes Act [of 1978], and disputes regarding whether a contractor has provided employees with paid sick leave prescribed by this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to this order.

SEC. 5. *Severability*. If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) This order shall apply only to a new contract or contract-like instrument, as defined by the Secretary in the regulations issued pursuant to section 3(a) of this order, if:

(i)(A) it is a procurement contract for services or construction;

(B) it is a contract or contract-like instrument for services covered by the Service Contract Act;

(C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or

(D) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(ii) the wages of employees under such contract or contract-like instrument are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from its minimum wage and overtime provisions.

(e) For contracts or contract-like instruments covered by the Service Contract Act or the Davis-Bacon Act, this order shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes. For procurement contracts in which employees' wages are governed by the Fair Labor Standards Act, this order shall apply only to contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to this order pursuant to regulations or actions taken under section 3 of this order.

(f) This order shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended; or any contracts or contract-like instruments expressly excluded by the regulations issued pursuant to section 3(a) of this order.

(g) Independent agencies are strongly encouraged to comply with the requirements of this order.

SEC. 7. *Effective Date*. (a) This order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued, or the contract has been awarded outside the solicitation process, on or after:

(i) January 1, 2017, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 3(a) of this order; or

(ii) January 1, 2017, for contracts where an agency action is taken pursuant to section 3(b) of this order, consistent with the effective date for such action.

(b) This order shall not apply to contracts or contract-like instruments that are awarded, or entered into pursuant to solicitations issued, on or before the effective date for the relevant action taken pursuant to section 3 of this order.

BARACK OBAMA.

§ 6301. Authorization requirement

(a) IN GENERAL.—A contract or purchase on behalf of the Federal Government shall not be made unless the contract or purchase is authorized by law or is under an appropriation adequate to its fulfillment.

(b) EXCEPTION.—

(1) DEFINITION.—In this subsection, the term ''defined Secretary'' means—

(A) the Secretary of Defense; or

(B) the Secretary of Homeland Security with respect to the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(2) IN GENERAL.—Subsection (a) does not apply to a contract or purchase made by a defined Secretary for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.

(3) CURRENT YEAR LIMITATION.—A contract or purchase made by a defined Secretary under this subsection may not exceed the necessities of the current year.

(4) REPORTS.—The defined Secretary shall immediately advise Congress when authority is exercised under this subsection. The defined Secretary shall report quarterly on the estimated obligations incurred pursuant to the authority granted in this subsection.

(c) SPECIAL RULE FOR PURCHASE OF LAND.—Land may not be purchased by the Federal Government unless the purchase is authorized by law.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3803; Pub. L. 111–281, title IX, § 903(a)(4), Oct. 15, 2010, 124 Stat. 3010.)

AMENDMENT NOT SHOWN IN TEXT

Subsecs. (a) and (b) of this section are derived from section 11 of former Title 41, Public Contracts, which was amended by Pub. L. 111–281, title IX, § 903(a)(4), Oct. 15, 2010, 124 Stat. 3010, prior to being repealed and reenacted as subsecs. (a) and (b) of this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For applicability of that amendment to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 903 of Pub. L. 111–281 provided that, effective with the enactment of Pub. L. 109–241, section 902(c) of Pub. L. 109–241, which amended section 3732 of the Revised Statutes, is amended by inserting in the directory language, ''of the United States'' after ''Revised Statutes'', resulting in no change in text.

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6301(a)	41:11(a) (words before 2nd comma).	R.S. § 3732; Pub. L. 89–687, title VI, § 612(e), Oct. 15, 1966, 80 Stat. 993; Pub. L. 98–557, § 17(e)(1), (2), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(4), Feb. 10, 1996, 110 Stat. 677; Pub. L. 109–241, title IX, § 902(c), July 11, 2006, 120 Stat. 566.
6301(b)	41:11(a) (words after 2nd comma), (b).	
6301(c)	41:14.	R.S. § 3736.

In subsection (b)(1)(A), the words ''Secretary of Defense'' are substituted for ''Department of Defense'' because of 10:113.

In subsection (b)(1)(B), the words ''Secretary of Homeland Security'' are substituted for ''Department of Homeland Security'' because of section 102(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)(2)).

§ 6302. Contracts for fuel made by Secretary of the Army

The Secretary of the Army, when the Secretary believes it is in the interest of the United States, may enter into contracts and incur obligations for fuel in sufficient quantities to meet the requirements for one year without regard to the current fiscal year. Amounts appropriated for the fiscal year in which the contract is made or amounts appropriated or which may be appropriated for the following fiscal year may be used to pay for supplies delivered under a contract made pursuant to this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3804.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6302	41:11a.	June 30, 1921, ch. 33, § 1 (last proviso on p. 78), 42 Stat. 78.

The words ''Secretary of the Army'' are substituted for ''Secretary of War'' because of section 205(a) of the National Security Act of 1947 (ch. 343, 61 Stat. 501). Section 205(a) was repealed by section 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 676). Section 1 of the Act of August 10, 1956 (70A Stat. 1) enacted Title 10, ''Armed Forces'', and under sections 3011 to 3013 of title 10, the Department of the Army remains under the administrative supervision of the Secretary of the Army.

§ 6303. Certain contracts limited to appropriated amounts

A contract to erect, repair, or furnish a public building, or to make any public improvement, shall not be made on terms requiring the Federal Government to pay more than the amount specifically appropriated for the activity covered by the contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3804.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6303	41:12.	R.S. § 3733.

The words ''the activity covered by the contract'' are substituted for ''the specific purpose'' for clarity.

§ 6304. Certain contracts limited to one-year term

Except as otherwise provided, an executive department shall not make a contract for stationery or other supplies for a term longer than one year from the time the contract is made.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3804.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6304	41:13.	R.S. § 3735.

The words ''an executive department shall not'' are substituted for ''it shall not be lawful for any of the executive departments to'' to state the legal prohibition directly and to eliminate unnecessary words.

§ 6305. Prohibition on transfer of contract and certain allowable assignments

(a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party to whom the Federal Government gives a contract or order may not transfer the contract or order, or any interest in the contract or order, to another party. A purported transfer in violation of this subsection annuls the contract or order so far as the Federal Government is concerned, except that all rights of action for breach of contract are reserved to the Federal Government.

(b) ASSIGNMENT.—

(1) IN GENERAL.—Notwithstanding subsection (a) and in accordance with the requirements of this subsection, amounts due from the Federal Government under a contract may be assigned to a bank, trust company, Federal lending agency, or other financing institution.

(2) MINIMUM AMOUNT.—This subsection applies only to a contract under which the aggregate amounts due from the Federal Government total at least $1,000.

(3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made under this subsection if the contract forbids the assignment.

(4) FULL BALANCE DUE.—Unless otherwise expressly permitted by the contract, an assignment under this subsection must cover the balance of all amounts due from the Federal Government under the contract.

(5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by the contract, an assignment under this subsection may not be made to more than one party or be subject to further assignment, except that assignment may be made to one party as agent or trustee for 2 or more parties participating in the financing.

(6) WRITTEN NOTICE.—The assignee of an assignment under this subsection shall file written notice of the assignment and a true copy of the instrument of assignment with—

(A) the contracting officer or head of the officer's department or agency;

(B) the surety on any bond connected with the contract; and

(C) the disbursing officer, if any, designated in the contract to make payment.

(7) VALIDITY.—Notwithstanding any law to the contrary governing the validity of assignments, an assignment under this subsection is a valid assignment for all purposes.

(8) NO REFUND TO COVER ASSIGNOR'S LIABILITY.—The assignee of an assignment under this subsection is not liable to make any refund to the Federal Government because of an assignor's liability to the Federal Government, whether that liability arises from the contract or independently.

(9) AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.—

(A) CONTRACT PROVISION.—A contract of the Department of Defense, the General Services Administration, the Department of Energy, or another department or agency of the Federal Government designated by the President may, on a determination of need by the President, provide or be amended without consideration to provide that payments made to an assignee under the contract are not subject to reduction or setoff. Each determination of need by the President under this subparagraph shall be published in the Federal Register.

(B) CARRYING OUT CONTRACT PROVISION.—When a ''no reduction or setoff'' provision as described in subparagraph (A) is included in a contract, payments to the assignee are not subject to reduction or setoff for an assignor's liability arising—

(i) independently of the contract;

(ii) on account of renegotiation under a renegotiation statute or under a statutory renegotiation article in the contract;

(iii) on account of fines;

(iv) on account of penalties; or

(v) on account of taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of the contract.

(C) LIMITATION.—Subparagraph (B)(iv) does not apply to amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3804.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6305(a)	41:15(a).	R.S. § 3737; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41; Pub. L. 103–355, title II, § 2451, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104–106, div. D, title XLIII, § 4321(i)(9), Feb. 10, 1996, 110 Stat. 676.
6305(b)(1)	41:15(b) (words before par. (1) less words related to minimum amount).	
6305(b)(2)	41:15(b) (words before par. (1) related to minimum amount).	
6305(b)(3)	41:15(b)(1).	
6305(b)(4)	41:15(b)(2) (related to full balance due).	
6305(b)(5)	41:15(b)(2) (related to single assignment).	
6305(b)(6)	41:15(b)(3).	
6305(b)(7)	41:15(c).	
6305(b)(8)	41:15(d).	
6305(b)(9)(A)	41:15(e).	
6305(b)(9)(B)	41:15(f) (less parenthetical phrase in par. (3)).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6305(b)(9)(C)	41:15(f) (parenthetical phrase in par. (3)), (g).	

In subsection (a), the words ''The party to whom the Federal Government gives a contract or order'' are substituted for ''the party to whom such contract or order is given'' for clarity. The words ''A purported transfer in violation of this subsection'' are substituted for ''any such transfer'' because an actual transfer is precluded by this provision.

In subsection (b)(1), the words ''amounts due from the Federal Government'' are substituted for ''moneys due or to become due from the United States or from any agency or department thereof'' to eliminate unnecessary words. The words ''may be assigned'' are added to provide explicitly for authority that is necessarily implied by the source provision.

In subsection (b)(3), the words ''in the case of any contract entered into after October 9, 1940'' are omitted as obsolete.

In subsection (b)(5), the words ''participating in such financing'' are omitted as unnecessary.

In subsection (b)(8), the words ''is not liable to make any refund to the Federal Government'' are substituted for ''no [liability] . . . shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment'' to eliminate unnecessary words. The words ''an assignor's liability to the Federal Government'' are substituted for ''liability of any nature of the assignor to the United States or any department or agency thereof'' for clarity and to eliminate unnecessary words.

In subsection (b)(9)(A), the words ''except any such contract under which full payment has been made'' are omitted as unnecessary because subsection (b)(8) precludes refund where full payment has already been made. The words ''payments made to an assignee under the contract'' are substituted for ''payments to be made to the assignee of any moneys due or to become due under such contract'' to eliminate unnecessary words.

In subsection (b)(9)(B), the words ''When a 'no reduction or setoff' provision as described in subparagraph (A) is included in a contract'' are substituted for ''If a provision described in subsection (e) of this section or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract'', the words ''payments to the assignee'' are substituted for ''payments to be made thereafter to an assignee of any moneys due or to become due'', and the words ''an assignor's liability'' are substituted for ''any liability of any nature of the assignor to the United States or any department or agency thereof'', for clarity and to eliminate unnecessary words.

In subsection (b)(9)(C), the text of 40:15(g), which provided that nothing in 40:15 affected rights and obligations accrued before subsection (g) was added by the Act of May 15, 1951 (ch. 75, 65 Stat. 41), is omitted as obsolete.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Oct. 3, 1995, 60 F.R. 52289, provided:

Memorandum for the Heads of Executive Departments and Agencies

Section 2451 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 ([amending former] 41 U.S.C. 15 [see 41 U.S.C. 6305]) (''Act''), provides, in part, that ''[a]ny contract of the Department of Defense, the General Services Administration, the Department of Energy or any other department or agency of the United States designated by the President, except [con-

tracts where] . . . full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under [the] contract shall not be subject to reduction or set-off.''

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby designate all other departments and agencies of the United States as subject to this provision. Furthermore, I hereby delegate to the Secretaries of Defense and Energy, the Administrator of General Services, and the heads of all other departments and agencies, the authority under section 2451 of the Act to make determinations of need for their respective agency's contracts, subject to such further guidance as issued by the Office of Federal Procurement Policy.

The authority delegated by this memorandum may be further delegated within the departments and agencies.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

§ 6306. Prohibition on Members of Congress making contracts with Federal Government

(a) IN GENERAL.—A Member of Congress may not enter into or benefit from a contract or agreement or any part of a contract or agreement with the Federal Government.

(b) EXEMPTIONS.—

(1) IN GENERAL.—Subsection (a) does not apply to contracts that the Secretary of Agriculture may enter into with farmers.

(2) CERTAIN ACTS.—Subsection (a) does not apply to a contract entered into under—

(A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

(B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(C) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.).

(3) PUBLIC RECORD.—An exemption under this subsection shall be made a matter of public record.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3805.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6306(a)	41:22 (1st sentence).	R.S. § 3741; Feb. 27, 1877, ch. 69, (16th complete par. on p. 249), 19 Stat. 249; Pub. L. 103–355, title VI, § 6004, Oct. 13, 1994, 108 Stat. 3364; Pub. L. 104–106, div. D, title XLIII, § 4321(i)(12), Feb. 10, 1996, 110 Stat. 676.
6306(b)	41:22 (last sentence).	Jan. 25, 1934, ch. 5, (related to R.S. § 3741), 48 Stat. 337; June 27, 1934, ch. 847, title V, § 510, 48 Stat. 1264; Aug. 26, 1937, ch. 821, 50 Stat. 838.

In subsection (b)(2), the words ''Emergency Farm Mortgage Act of 1933'' and ''Federal Farm Mortgage Corporation Act'' are omitted because all provisions of those Acts have previously been executed or repealed.

In subsection (b)(2)(B), the words ''Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)'' are substituted for ''Federal Farm Loan Act'' and ''Farm Credit Act of 1933'' because of section 5.40(a), formerly 5.26(a), of the Farm Credit Act of 1971 (Pub. L. 92–181, 12 U.S.C. 2001 note).

In subsection (b)(2)(C), the words ''Home Owners' Loan Act'' are substituted for ''Home Owners' Loan Act of 1933'' because of the amendment to 12:1461 made by Public Law 101–73.

§ 6307. Contracts with Federal Government-owned establishments and availability of appropriations

An order or contract placed with a Federal Government-owned establishment for work, material, or the manufacture of material pertaining to an approved project is deemed to be an obligation in the same manner that a similar order or contract placed with a commercial manufacturer or private contractor is an obligation. Appropriations remain available to pay an obligation to a Federal Government-owned establishment just as appropriations remain available to pay an obligation to a commercial manufacturer or private contractor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3806.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6307	41:23.	June 5, 1920, ch. 240, (last par. under heading ''Purchase of Articles Manufactured at Government Arsenals''), 41 Stat. 975. July 1, 1922, ch. 259, (1st proviso on p. 812), 42 Stat. 812.

The words ''heretofore or'' are omitted as obsolete. The word ''hereafter'' is omitted as unnecessary because the provision is restated as permanent law rather than as part of a fiscal year appropriation.

§ 6308. Contracts for transportation of Federal Government securities

When practicable, a contract for transporting bullion, cash, or securities of the Federal Government shall be awarded to the lowest responsible bidder after notice to all parties with means of transportation.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3806.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6308	41:24.	July 7, 1884, ch. 332, (words after ''fifty five thousand dollars'' in 3d par. under heading ''Miscellaneous Objects Under the Treasury Department''), 23 Stat. 204.

The words ''bullion, cash, or securities of the Federal Government'' are substituted for ''moneys, bullion, coin, notes, bonds, and other securities of the United States, and paper'' to eliminate unnecessary words. The word ''awarded'' is substituted for ''let'' to use more modern terminology.

§ 6309. Honorable discharge certificate in lieu of birth certificate

(a) IN GENERAL.—An employer described in subsection (b) may not deny employment, on account of failure to produce a birth certificate, to an individual who submits, in lieu of the birth certificate, an honorable discharge certificate (or certificate issued in lieu of an honorable discharge certificate) from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the United States, unless the honorable discharge certificate shows on its face that the individual may have been an alien at the time of its issuance.

(b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to in subsection (a) is an employer—

(1) engaged in—

(A) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or

(B) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility; and

(2) engaged in the activity described in paragraph (1) under—

(A) a contract with the Federal Government; or

(B) any contract that the President, the Secretary of the Army, the Secretary of the Air Force, the Secretary of the Navy, or the Secretary of the Department in which the Coast Guard is operating certifies to the employer to be necessary to the national defense.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3806.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6309(a)	41:49.	June 22, 1942, ch. 432, § 1, 56 Stat. 375.
6309(b)	41:50.	June 22, 1942, ch. 432, § 2, 56 Stat. 376; Pub. L. 97–31, § 12(16), Aug. 6, 1981, 95 Stat. 154.

In subsection (a), the words ''Air Force'' are added because of section 207(a) and (f) of the National Security Act of 1947 (ch. 343, 61 Stat. 502, 503). Section 207(a) and (f) was repealed by section 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 676). Section 1 of the Act of August 10, 1956 (70A Stat. 1) enacted Title 10, ''Armed Forces'' and under subtitle D of title 10 the Department of the Air Force remained an independent administrative entity in the Department of Defense.

Subsection (b)(2)(B) is set out as a separate provision to clarify that the certification applies only to contracts other than contracts with the Federal Government. If the certification were to be construed as applying to all contracts, then the words ''under a contract with the United States or'' in section 2 of the Act of June 22, 1942, would be rendered meaningless.

In subsection (b)(2)(B), the words ''Secretary of the Army'' are substituted for ''Secretary of War'', and the words ''Secretary of the Air Force'' are added, because of sections 205(a) and 207(a) and (f) of the National Security Act of 1947 (ch. 343, 61 Stat. 501, 502, 503). Sections 205(a) and 207(a) and (f) were repealed by section 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 676). Section 1 of the Act of August 10, 1956 (70A Stat. 1) enacted Title 10, ''Armed Forces'' and under sections 3010 to 3013 and 8010 to 8013 the Departments of the Army and Air Force remained under the administrative supervision of the Secretaries of the Army and Air Force, respectively. The words ''Secretary of the Department in which the Coast Guard is operating'' are substituted for ''Secretary of Transportation'' because of 6:468(b) and (h), 551(d), and 552(d), 14:1 and 3, and the Department of Homeland Security Reorganization Plan of November 25, 2002 (H. Doc. No. 108–16, 108th Cong., 1st Sess. (6 U.S.C. 542 note)).

CHAPTER 65—CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $10,000

Sec.
6501. Definitions.
6502. Required contract terms.
6503. Breach or violation of required contract terms.
6504. Three-year prohibition on new contracts in case of breach or violation.
6505. Exclusions.
6506. Administrative provisions.
6507. Hearing authority and procedures.
6508. Authority to make exceptions.
6509. Other procedures.
6510. Manufacturers and regular dealers.
6511. Effect on other law.

§ 6501. Definitions

In this chapter—

(1) AGENCY OF THE UNITED STATES.—The term ''agency of the United States'' means an executive department, independent establishment, or other agency or instrumentality of the United States, the District of Columbia, or a corporation in which all stock is beneficially owned by the Federal Government.

(2) PERSON.—The term ''person'' includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3807.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6501(1)	41:35 (matter before subsec. (a) related to definition of ''agency of the United States'').	June 30, 1936, ch. 881, § 1 (matter before subsec. (a) related to definition of ''agency of the United States''), 49 Stat. 2036; Pub. L. 103–355, title VII, § 7201(1), Oct. 13, 1994, 108 Stat. 3378.
6501(2)	41:41.	June 30, 1936, ch. 881, § 7, 49 Stat. 2039; Pub. L. 95–598, title III, § 326, Nov. 6, 1978, 92 Stat. 2679.
6501(3)	no source.	

EX. ORD. NO. 13126. PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR

Ex. Ord. No. 13126, June 12, 1999, 64 F.R. 32383, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to continue the executive branch's commitment to fighting abusive child labor practices, it is hereby ordered as follows:

SECTION. 1. *Policy*. It shall be the policy of the United States Government, consistent with the Tariff Act of 1930, 19 U.S.C. 1307, the Fair Labor Standards Act [of 1938], 29 U.S.C. 201 *et. seq.*, and the Walsh-Healey Public Contracts Act [Walsh-Healey Act], [former] 41 U.S.C. 35 *et seq.* [see 41 U.S.C. 6501 et seq.], that executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.

SEC. 2. *Publication of List*. Within 120 days after the date of this order, the Department of Labor, in consultation and cooperation with the Department of the Treasury and the Department of State, shall publish in the Federal Register a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child

labor. The Department of Labor may conduct hearings to assist in the identification of those products.

SEC. 3. *Procurement Regulations*. Within 120 days after the date of this order, the Federal Acquisition Regulatory Council shall issue proposed rules to implement the following:

(a) *Required Solicitation Provisions*. Each solicitation of offers for a contract for the procurement of a product included on the list published under section 2 of this order shall include the following provisions:

(1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and

(2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

(b) *Investigations*. Whenever a contracting officer of an executive agency has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture a product furnished pursuant to a contract subject to the requirements of subsection 3(a) of this order, the head of the executive agency shall refer the matter for investigation to the Inspector General of the executive agency and, as the head of the executive agency or the Inspector General determines appropriate, to the Attorney General and the Secretary of the Treasury.

(c) *Remedies*.

(1) The head of an executive agency may impose remedies as provided in this subsection in the case of a contractor under a contract of the executive agency if the head of the executive agency finds that the contractor:

(i) Has furnished under the contract products that have been mined, produced, or manufactured by forced or indentured child labor or uses forced or indentured child labor in the mining, production, or manufacturing operations of the contractor;

(ii) Has submitted a false certification under subsection 3(a)(1) of this order; or

(iii) Has failed to cooperate in accordance with the obligation imposed pursuant to subsection 3(a)(2) of this order.

(2) The head of an executive agency, in his or her sole discretion, may terminate a contract on the basis of any finding described in subsection 3(c)(1) of this order for any contract entered into after the date the regulation called for in section 3 of this order is published in final.

(3) The head of an executive agency may debar or suspend a contractor from eligibility for Federal contracts on the basis of a finding that the contractor has engaged in an act described in subsection 3(c)(1) of this order. The provision for debarment may not exceed 3 years.

(4) The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (maintained by the Administrator as described in the Federal Acquisition Regulation) each party that is debarred, suspended, proposed for debarment or suspension, or declared ineligible by the head of an agency on the basis that the person has engaged in an act described in subsection 3(c)(1) of this order.

(5) This section shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a finding described in subsection 3(c)(1) of this order.

SEC. 4. *Report*. Within 2 years after implementation of any final rule under this order, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget a report on the actions taken pursuant to this order.

SEC. 5. *Scope*. (a) Any proposed rules issued pursuant to section 3 of this order shall apply only to acquisitions for a total amount in excess of the micro-purchase threshold as defined in section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f)).

(b) This order does not apply to a contract that is for the procurement of any product, or any article, material, or supply contained in a product that is mined, produced, or manufactured in any foreign country if:

(1) the foreign country is a party to the Agreement on Government Procurement annexed to the WTO Agreement or a party to the North American Free Trade Agreement (''NAFTA''); and

(2) the contract is of a value that is equal to or greater than the United States threshold specified in the Agreement on Government Procurement annexed to the WTO Agreement or NAFTA, whichever is applicable.

SEC. 6. *Definitions*. (a) ''Executive agency'' and ''agency'' have the meaning given to ''executive agency'' in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) ''WTO Agreement'' means the Agreement Establishing the World Trade Organization, entered into on April 15, 1994.

(c) ''Forced or indentured child labor'' means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

SEC. 7. *Judicial Review*. This order is intended only to improve the internal management of the executive branch and does not create any rights or benefits, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

WILLIAM J. CLINTON.

§ 6502. Required contract terms

A contract made by an agency of the United States for the manufacture or furnishing of materials, supplies, articles, or equipment, in an amount exceeding $10,000, shall include the following representations and stipulations:

(1) MINIMUM WAGES TO BE PAID.—All individuals employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum wages, as determined by the Secretary, for individuals employed in similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract, except that this paragraph applies only to purchases or contracts relating to industries that have been the subject matter of a determination by the Secretary.

(2) MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.—No individual employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract shall be permitted to work in excess of 40 hours in any one week, except

that this paragraph does not apply to an employer who has entered into an agreement with employees pursuant to paragraph (1) or (2) of section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(b)(1) or (2)).

(3) INELIGIBLE EMPLOYEES.—No individual under 16 years of age and no incarcerated individual will be employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract, except that this section, or other law or executive order containing similar prohibitions against the purchase of goods by the Federal Government, does not apply to convict labor that satisfies the conditions of section 1761(c) of title 18.

(4) STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CONTRACT PERFORMED.—No part of the contract will be performed, and no materials, supplies, articles, or equipment will be manufactured or fabricated under the contract, in plants, factories, buildings, or surroundings, or under working conditions, that are unsanitary, hazardous, or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part of the work is to be performed is prima facie evidence of compliance with this paragraph.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3807.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6502 (matter before par. (1)).	41:35 (matter before subsec. (a) less words related to definition of ''agency of the United States'').	June 30, 1936, ch. 881, § 1 (matter before subsec. (a) less words related to definition of ''agency of the United States''), (a), 49 Stat. 2036; Pub. L. 103–355, title VII, § 7201(1), Oct. 13, 1994, 108 Stat. 3378.
6502(1)	41:35(a).	
	41:45.	June 30, 1936, ch. 881, § 13, formerly § 11, 49 Stat. 2039; renumbered § 12, June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; renumbered § 13, Pub. L. 104–106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675.
6502(2)–(4) ...	41:35(b)–(d).	June 30, 1936, ch. 881, § 1(b)–(d), 49 Stat. 2036; May 13, 1942, ch. 306, 56 Stat. 277; Pub. L. 90–351, title I, § 819(b), formerly § 827(b), as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1215 and renumbered § 819(b), Pub. L. 98–473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093; Pub. L. 99–145, title XII, § 1241(b), Nov. 8, 1985, 99 Stat. 734; Pub. L. 103–355, title VII, § 7201(1), Oct. 13, 1994, 108 Stat. 3378.

In the matter before paragraph (1), the words ''and entered into'' are omitted as unnecessary.

In paragraph (1), the words ''under the contract'' are substituted for ''used in the performance of the contract'' in 41:35(a) to eliminate unnecessary words and for consistency in the chapter. The words ''Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936'' in 41:45 are omitted as obsolete.

In paragraph (2), the words ''under the contract'' are substituted for ''used in the performance of the contract'' to eliminate unnecessary words and for consistency in the chapter.

In paragraph (3), the words ''No individual under 16 years of age'' are substituted for ''no male person under sixteen years of age and no female person under eighteen years of age'' to reflect the interpretation of this provision subsequent to enactment of civil rights laws such as section 703 of the Civil Rights Act of 1964 (42:2000e–2), as carried out by the Department of Labor through 41 C.F.R. Part 50–201.104. The words ''incarcerated individual'' are substituted for ''convict labor'' the first time the words appear because the term ''convict labor'' is ambiguous and may be interpreted to include individuals who are not incarcerated. This would be an inappropriate interpretation because 41:35(c) provides an exception for ''convict labor'' that satisfies the conditions of 18:1761(c) regarding certain non-Federal prison work projects. The words ''or production'' are omitted for consistency with the source provisions for paragraphs (1) and (2) and because, in this context, the concept of ''production'' is included in the words ''manufacture or furnishing''. The words ''under the contract'' are substituted for ''included in such contract'' for consistency in the chapter.

§ 6503. Breach or violation of required contract terms

(a) APPLICABLE BREACH OR VIOLATION.—This section applies in case of breach or violation of a representation or stipulation included in a contract under section 6502 of this title.

(b) LIQUIDATED DAMAGES.—In addition to damages for any other breach of the contract, the party responsible for a breach or violation described in subsection (a) is liable to the Federal Government for the following liquidated damages:

(1) An amount equal to the sum of $10 per day for each individual under 16 years of age and each incarcerated individual knowingly employed in the performance of the contract.

(2) An amount equal to the sum of each underpayment of wages due an employee engaged in the performance of the contract, including any underpayments arising from deductions, rebates, or refunds.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to the Federal Government being entitled to damages described in subsection (b), the agency of the United States that made the contract may cancel the contract and make open-market purchases or make other contracts for the completion of the original contract, charging any additional cost to the original contractor.

(d) RECOVERY OF AMOUNTS DUE.—An amount due the Federal Government because of a breach or violation described in subsection (a) may be withheld from any amounts owed the contractor under any contract under section 6502 of this title or may be recovered in a suit brought by the Attorney General.

(e) EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.—An amount withheld or recovered under subsection (d) that is based on an underpayment of wages as described in subsection (b)(2) shall be held in a special deposit account. On order of the Secretary, the amount shall be paid directly to the underpaid employee on whose account the amount was withheld or recovered. However, an employee's claim for payment under this subsection may be entertained only if made within one year from the date of actual notice to the contractor of the withholding or recovery.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3808.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6503	41:36.	June 30, 1936, ch. 881, § 2, 49 Stat. 2037.

In subsection (b)(1), the words ''individual under 16 years of age'' are substituted for ''male person under sixteen years of age or each female person under eighteen years of age'' to reflect the interpretation of this provision subsequent to enactment of civil rights laws such as section 703 of the Civil Rights Act of 1964 (42:2000e–2), as carried out by the Department of Labor through 41 C.F.R. Part 50–201.104. The words ''incarcerated individual'' are substituted for ''convict laborer'' because of the exception to convict labor that satisfies the conditions of 18:1761(c). Section 1761 does not apply to non-incarcerated convicts.

Subsection (b)(2) is substituted for ''a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract'' for consistency in the chapter.

In subsection (c), the words ''made the contract'' and ''make other contracts'' are substituted for ''entering into such contract'' and ''enter into other contracts'', respectively, for consistency in the revised title.

In subsection (d), the words ''suit brought by the Attorney General'' are substituted for ''suits brought in the name of the United States of America by the Attorney General thereof'' to eliminate unnecessary words.

§ 6504. Three-year prohibition on new contracts in case of breach or violation

(a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to each agency of the United States a list containing the names of persons found by the Secretary to have breached or violated a representation or stipulation included in a contract under section 6502 of this title.

(b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends otherwise, a contract described in section 6502 of this title may not be awarded to a person named on the list under subsection (a), or to a firm, corporation, partnership, or association in which the person has a controlling interest, until 3 years have elapsed from the date of the determination by the Secretary that a breach or violation occurred.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3808.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6504	41:37.	June 30, 1936, ch. 881, § 3, 49 Stat. 2037.

In this section, the words ''or firms'' are omitted because of the definition of ''person'' in 41:41, restated in section 6501 of the revised title.

In subsection (a), the words ''or violated'' are added for consistency in the chapter.

In subsection (b), the words ''contract described in section 6502 of this title'' are substituted for ''contracts'' to clarify the scope of the prohibition. The words ''the date of the determination by the Secretary that a breach or violation occurred'' are substituted for ''the date the Secretary of Labor determines such breach to have occurred'' to clarify that the three-year period begins with the date of the Secretary's determination and not with the date of the breach or violation. The words ''or violation'' are added for consistency in the chapter.

§ 6505. Exclusions

(a) ITEMS AVAILABLE IN THE OPEN MARKET.—This chapter does not apply to the purchase of materials, supplies, articles, or equipment that may usually be bought in the open market.

(b) PERISHABLES AND AGRICULTURAL PRODUCTS.—This chapter does not apply to any of the following:

(1) Perishables, including dairy, livestock and nursery products.

(2) Agricultural or farm products processed for first sale by the original producers.

(3) Contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or products of agricultural commodities.

(c) CARRIAGE OF FREIGHT OR PERSONNEL.—This chapter may not be construed to apply to—

(1) the carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect; or

(2) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3809.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6505	41:43.	June 30, 1936, ch. 881, § 9, 49 Stat. 2039.

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (c)(2), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

§ 6506. Administrative provisions

(a) IN GENERAL.—The Secretary shall administer this chapter.

(b) REGULATIONS.—The Secretary may make, amend, and rescind regulations as necessary to carry out this chapter.

(c) USE OF GOVERNMENT OFFICERS AND EMPLOYEES.—The Secretary shall use Federal officers and employees and, with a State's consent, State and local officers and employees as the Secretary finds necessary to assist in the administration of this chapter.

(d) APPOINTMENTS.—The Secretary shall appoint an administrative officer and attorneys, experts, and other employees from time to time as the Secretary finds necessary for the administration of this chapter. The appointments are subject to chapter 51 and subchapter III of chapter 53 of title 5 and other law applicable to the employment and compensation of officers and employees of the Federal Government.

(e) INVESTIGATIONS.—The Secretary, or an authorized representative of the Secretary, may make investigations and findings as provided in this chapter and may, in any part of the United States, prosecute an inquiry necessary to carry out this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3809.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6506	41:38.	June 30, 1936, ch. 881, § 4, 49 Stat. 2038.

In subsection (b), the word ''rules'' is omitted as included in ''regulations''.

In subsection (c), the words ''and to prescribe rules and regulations with respect thereto'' are omitted as unnecessary because of subsection (b).

In subsection (d), the words ''without regard to the provisions of the civil-service laws'', which appear in section 4 of the Walsh-Healey Act (June 30, 1936, ch. 881, 49 Stat. 2038), are omitted as obsolete because of Executive Order 8743, April 23, 1941 (5 U.S.C. 3301 note), issued by the President pursuant to the Act of November 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211. The words ''the Classification Act of 1923'', which appear in section 4 of the Walsh-Healey Act (June 30, 1936, ch. 881, 49 Stat. 2038), are considered to be a reference to the Classification Act of 1949 because of section 1106(a) of the Classification Act of 1949 (Oct. 28, 1949, ch. 782, 63 Stat. 972). The words ''chapter 51 and subchapter III of chapter 53 of title 5'' are substituted for the reference to the Classification Act of 1949 because of section 7(b) of Public Law 89–554 (5 U.S.C. note prec. 101).

§ 6507. Hearing authority and procedures

(a) RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINATIONS.—A wage determination under section 6502(1) of this title shall be made on the record after opportunity for a hearing.

(b) AUTHORITY TO HOLD HEARINGS.—The Secretary or an impartial representative designated by the Secretary may hold hearings when there is a complaint of breach or violation of a representation or stipulation included in a contract under section 6502 of this title. The Secretary may initiate hearings on the Secretary's own motion or on the application of a person affected by the ruling of an agency of the United States relating to a proposal or contract under this chapter.

(c) ORDERS TO COMPEL TESTIMONY.—The Secretary or an impartial representative designated by the Secretary may issue orders requiring witnesses to attend hearings held under this section and to produce evidence and testify under oath. Witnesses shall be paid fees and mileage at the same rates as witnesses in courts of the United States.

(d) ENFORCEMENT OF ORDERS.—If a person refuses or fails to obey an order issued under subsection (c), the Secretary or an impartial representative designated by the Secretary may bring an action to enforce the order in a district court of the United States or in the district court of a territory or possession of the United States. A court has jurisdiction to enforce the order if the inquiry is being carried out within the court's judicial district or if the person is found or resides or transacts business within the court's judicial district. The court may issue an order requiring the person to obey the order issued under subsection (c), and the court may punish any further refusal or failure as contempt of court.

(e) FINDINGS OF FACT.—After notice and a hearing, the Secretary or an impartial representative designated by the Secretary shall make findings of fact. The findings are conclusive for agencies of the United States. If supported by a preponderance of the evidence, the findings are conclusive in any court of the United States.

(f) DECISIONS.—The Secretary or an impartial representative designated by the Secretary may make decisions, based on findings of fact, that are considered necessary to enforce this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3809.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6507(a)	41:43a(b) (1st sentence).	June 30, 1936, ch. 881, § 10(b) (1st sentence), as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; Pub. L. 104–106, div. D, title XLIII, § 4321(f)(2), Feb. 10, 1996, 110 Stat. 675.
6507(b)–(f) ..	41:39.	June 30, 1936, ch. 881, § 5, 49 Stat. 2038.

In subsection (d), the word ''contumacy'' is omitted as included in ''refuses or fails''. The words ''may bring an action to enforce the order'' are substituted for ''upon the application by'' for consistency in the revised title and with other titles of the United States Code. The words ''the United States District Court for the District of Columbia'' in section 5 of the Act of June 30, 1936 (which were substituted for ''the Supreme Court of the District of Columbia'' by section 32(b) of the Act of June 25, 1948 (ch. 646, 62 Stat. 991), as amended by section 127 of the Act of May 24, 1949 (ch. 139, 63 Stat. 107), and which were editorially omitted from 41:39) are omitted as included in ''a district court of the United States'' because of sections 88 and 132(a) of title 28, United States Code. The words ''within the court's judicial district''' are substituted for ''within the jurisdiction of which'' for clarity and for consistency in the revised title and with other titles of the United States Code. The words ''requiring the person to obey the order issued under subsection (c)'' are substituted for ''requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question'' for clarity and to eliminate unnecessary words.

In subsection (e), the duty to make findings of fact is restated as a duty of the Secretary (or the Secretary's representative). The grammatical structure of the last sentence of 41:39 seems to suggest that the court, rather than the Secretary (or the Secretary's representative), serves as fact finder. However, the provision taken as a whole indicates that it is the Secretary (or the Secretary's representative) who serves as fact finder. It is the Secretary (or the Secretary's representative) before whom hearings are held, witnesses testify, and evidence is produced. The court's involvement is limited to compelling recalcitrant witnesses ''to appear before him [the Secretary] or representative designated by him''. The restatement clarifies the generally accepted understanding that the Secretary (or the Secretary's representative) serves as fact finder (see, e.g., *United States v. Sweet Briar*, 92 F. Supp. 777, 780 (W.D.S.C. 1950) (''the Secretary 'shall make findings of fact' ''); *Ready-Mix Concrete Company v. United States*, 158 F. Supp. 571, 578 (Cl. Ct. 1958) (''the findings of the Department of Labor'')).

§ 6508. Authority to make exceptions

(a) DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.—When the head of an agency of the United States makes a written finding that the inclusion of representations or stipulations under section 6502 of this title in a proposal or contract will seriously impair the conduct of Federal Government business, the Secretary shall make exceptions, in specific cases or

otherwise, when justice or the public interest will be served.

(b) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CONTRACTS.—When an agency of the United States and a contractor jointly recommend, the Secretary may modify the terms of an existing contract with respect to minimum wages and maximum hours of labor as the Secretary finds necessary and proper in the public interest or to prevent injustice and undue hardship.

(c) AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide reasonable limitations and may prescribe regulations to allow reasonable variations, tolerances, and exemptions in the application of this chapter to contractors, including with respect to minimum wages and maximum hours of labor.

(d) RATE OF PAY FOR OVERTIME.—When the Secretary permits an increase in the maximum hours of labor stipulated in a contract, the Secretary shall set a rate of pay for overtime. The overtime rate must be at least one and one-half times the basic hourly rate.

(e) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may suspend any of the representations and stipulations contained in section 6502 of this title whenever, in the President's judgment, suspension is in the public interest.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3810.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6508(a)	41:40 (1st sentence).	June 30, 1936, ch. 881, § 6, 49 Stat. 2038; June 28, 1940, ch. 440, title I, § 13, 54 Stat. 681.
6508(b)	41:40 (2d sentence).	
6508(c)	41:40 (3d sentence).	
6508(d)	41:40 (last sentence less proviso).	
6508(e)	41:40 (last sentence proviso).	

In subsection (a), the words ''an agency of the United States'' are substituted for ''the contracting agency or department'' for consistency in the chapter. Commas are inserted after ''exceptions'' and ''otherwise'' to clarify that the words ''when justice or the public interest will be served'' apply to exceptions in ''specific cases'' as well as ''otherwise''. The word ''thereby'' is omitted as unnecessary.

In subsection (b), the words ''an agency of the United States'' are substituted for ''the contracting agency'', and the words ''minimum wages'' are substituted for ''minimum rates of pay'', for consistency in the chapter.

In subsection (c), the word ''rules'' is omitted as included in ''regulations''. The words ''as hereinbefore described'' are omitted as unnecessary. The words ''minimum wages'' are substituted for ''minimum rates of pay'' for consistency in the chapter.

In subsection (d), the words ''received by any employee affected'' are omitted as unnecessary.

In subsection (e), the words ''or all'' are omitted as unnecessary.

§ 6509. Other procedures

(a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Notwithstanding section 553 of title 5, subchapter II of chapter 5 and chapter 7 of title 5 are applicable in the administration of sections 6501 to 6507 and 6511 of this title.

(b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of representations and stipulations in a contract under section 6502 of this title, an interested person has the right of judicial review of any legal question which might otherwise be raised, including wage determinations and the interpretation of the terms ''locality'' and ''open market''.

(c) JUDICIAL REVIEW OF WAGE DETERMINATIONS.—A person adversely affected or aggrieved by a wage determination under section 6502(1) of this title has the right of judicial review of the determination, or of the applicability of the determination, within 90 days after the determination is made, in the manner provided by chapter 7 of title 5. A person adversely affected or aggrieved by a wage determination is deemed to include a person in an industry to which the determination applies that is a supplier of materials, supplies, articles, or equipment that are purchased or intended to be purchased by the Federal Government from any source.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3810.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6509(a)	41:43a(a).	June 30, 1936, ch. 881, § 10(a), (b) (last sentence), (c), as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; Pub. L. 103–355, title VII, § 7201(2), (3), Oct. 13, 1994, 108 Stat. 3378.
6509(b)	41:43a(c).	
6509(c)	41:43a(b) (last sentence).	

Subsection (a) is substituted for ''Notwithstanding any provision of section 4 of the Administrative Procedure Act, such Act shall be applicable in the administration of sections 1 to 5 and 7 to 9 of this Act'' in section 10 of the Act of June 30, 1936 (ch. 881), for consistency in the revised title and because of section 7(b) of Public Law 89–554 (5 U.S.C. note prec. 101).

In subsection (c), the words ''has the right of judicial review'' are substituted for ''Review . . . may be had'' for consistency with subsection (b) and with section 6510(b) of the revised title and because the review provided for in chapter 7 of title 5 is denominated as judicial review. The words ''chapter 7 of title 5'' are substituted for ''section 10 of the Administrative Procedure Act'' on authority of section 7(b) of Public Law 89–554 (5 U.S.C. note prec. 101).

§ 6510. Manufacturers and regular dealers

(a) PRESCRIBING STANDARDS.—The Secretary may prescribe, in regulations, standards for determining whether a contractor is a manufacturer or regular dealer with respect to materials, supplies, articles, or equipment to be manufactured or furnished under, or used in the performance of, a contract entered into by an agency of the United States.

(b) JUDICIAL REVIEW.—An interested person has the right of judicial review of any legal question relating to interpretation of the terms ''regular dealer'' and ''manufacturer'' as defined pursuant to subsection (a).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3811.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6510	41:43b.	June 30, 1936, ch. 881, § 11, as added Pub. L. 103–355, title VII, § 7201(4), Oct. 13, 1994, 108 Stat. 3378; Pub. L. 104–106, div. D, title XLIII, § 4321(f)(1)(A), Feb. 10, 1996, 110 Stat. 675.

In subsection (a), the words ''an agency of the United States'' are substituted for ''any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States'' because of the definition in section 6501 of the revised title.

§ 6511. Effect on other law

This chapter may not be construed to modify or amend the following provisions:

(1) Chapter 83 of this title.

(2) Sections 3141 to 3144, 3146, and 3147 of title 40.

(3) Chapter 307 of title 18.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3811.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6511	41:42.	June 30, 1936, ch. 881, § 8, 49 Stat. 2039.

Paragraph (1) is substituted for ''Title III of the act entitled 'An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes', approved May 3, 1933 (commonly known as the Buy American Act)'' for consistency in the revised title and to correct an error in the source, which incorrectly gives May 3, 1933, rather than March 3, 1933, as the date of approval.

Paragraph (2) is substituted for ''the Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time'' because of section 5(c) of Public Law 107–217 (40 U.S.C. note prec. 101) and for consistency with title 40.

The words ''the labor provisions of Title II of the National Industrial Recovery Act, approved June 16, 1933, as extended'' are omitted as obsolete because of section 201 of the Act of June 21, 1938 (ch. 554, 52 Stat. 816), as amended by the Acts of June 27, 1940 (ch. 437, 54 Stat. 633), April 5, 1941 (ch. 40, 55 Stat. 110), and June 27, 1942 (ch. 450, 56 Stat. 410).

The words ''or [the labor provisions] of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935'' are omitted as obsolete. The intended reference was probably to section 7 of the Emergency Relief Appropriation Act of 1935 (49 Stat. 118). Section 7 of the Emergency Relief Appropriation Act of 1935 provided that the President shall require certain rates of pay for persons engaged in carrying out projects that were financed by amounts being appropriated in that Act.

Paragraph (3) is substituted for ''the Act entitled 'An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes', approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934'' for consistency with title 18. The Act of May 27, 1930 (ch. 340, 46 Stat. 391) and the Act of June 23, 1934 (ch. 736, 48 Stat. 1211), which were classified to sections 744a to 744n of former title 18, were substantially repealed and were replaced by chapter 307 and section 4162 of title 18 in the codification of title 18 by the Act of June 25, 1948 (ch. 645, 62 Stat. 683). Subsequently, section 4162 of title 18 was repealed by section 218(a)(4) of Public Law 98–473 (98 Stat. 2027).

CHAPTER 67—SERVICE CONTRACT LABOR STANDARDS

Sec.
6701. Definitions.
6702. Contracts to which this chapter applies.
6703. Required contract terms.
6704. Limitation on minimum wage.
6705. Violations.
6706. Three-year prohibition on new contracts in case of violation.
6707. Enforcement and administration of chapter.

§ 6701. Definitions

In this chapter:

(1) COMPENSATION.—The term ''compensation'' means any of the payments or fringe benefits described in section 6703 of this title.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(3) SERVICE EMPLOYEE.—The term ''service employee''—

(A) means an individual engaged in the performance of a contract made by the Federal Government and not exempted under section 6702(b) of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States;

(B) includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor; but

(C) does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations.

(4) UNITED STATES.—The term ''United States''—

(A) includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 et seq.), American Samoa, Guam, Wake Island, and Johnston Island; but

(B) does 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. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3811.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6701	41:357.	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.

In paragraph (3), the word ''individual'' is substituted for ''person'' because of the definition of ''person'' in 1:1. The words ''contract made by the Federal Government'' are substituted for ''contract entered into by the United States'' for consistency in the revised title.

The words ''as of July 30, 1976, and any subsequent revision of those regulations'' are omitted as obsolete.

In paragraph (4)(A), the words ''the outer Continental Shelf'' are substituted for ''Outer Continental Shelf lands'' for consistency with the definition in 43:1331 and for consistency with the more common usage generally found in subchapter III of chapter 29 of title 43. The words ''Eniwetok Atoll, Kwajalein Atoll'' are omitted because they are part of the Marshall Islands and therefore no longer part of the United States. The words ''Canton Island'' are omitted because it is part of Kiribati and therefore no longer part of the United States.

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (4)(A), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, 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 1301 of Title 43 and Tables.

§ 6702. Contracts to which this chapter applies

(a) IN GENERAL.—Except as provided in subsection (b), this chapter applies to any contract or bid specification for a contract, whether negotiated or advertised, that—

(1) is made by the Federal Government or the District of Columbia;

(2) involves an amount exceeding $2,500; and

(3) has as its principal purpose the furnishing of services in the United States through the use of service employees.

(b) EXEMPTIONS.—This chapter does not apply to—

(1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works;

(2) any work required to be done in accordance with chapter 65 of this title;

(3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

(5) a contract for public utility services, including electric light and power, water, steam, and gas;

(6) an employment contract providing for direct services to a Federal agency by an individual; and

(7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3812.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6702(a)	41:351(a) (words before par. (1) related to applicability).	Pub. L. 89–286, § 2(a) (words before par. (1) related to applicability), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 94–489, § 1(a), Oct. 13, 1976, 90 Stat. 2358.
6702(b)	41:356.	Pub. L. 89–286, § 7, Oct. 22, 1965, 79 Stat. 1035.

In subsection (b)(2), the words ''the Walsh-Healey Public Contracts Act (49 Stat. 2036)'', which appear in section 7(2) of Public Law 89–286 (79 Stat. 1036), are treated as a reference to the Act of June 30, 1936 (ch. 881, 49 Stat. 2036), which was known as the Walsh-Healey Act and which was subsequently designated as the Walsh-Healey Act by section 12 of the Act of June 30, 1936, which was added by section 10005(f)(5) of Public Law 103–355 (108 Stat. 3409).

In subsection (b)(7), the words ''United States Postal Service'' are substituted for ''Post Office Department'' because of sections 4(a) and 6(*o*) of the Postal Reorganization Act (Public Law 91–375, 84 Stat. 773, 783, 39 U.S.C. note prec. 101, 201 note).

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (b)(4), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

§ 6703. Required contract terms

A contract, and bid specification for a contract, to which this chapter applies under section 6702 of this title shall contain the following terms:

(1) MINIMUM WAGE.—The contract and bid specification shall contain a provision specifying the minimum wage to be paid to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative, in accordance with prevailing rates in the locality, or, where a collective-bargaining agreement covers the service employees, in accordance with the rates provided for in the agreement, including prospective wage increases provided for in the agreement as a result of arm's length negotiations. In any case the minimum wage may not be less than the minimum wage specified in section 6704 of this title.

(2) FRINGE BENEFITS.—The contract and bid specification shall contain a provision specifying the fringe benefits to be provided to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative to be prevailing in the locality, or, where a collective-bargaining agreement covers the service employees, to be provided for under the agreement, including prospective fringe benefit increases provided for in the agreement as a result of arm's-length negotiations. The fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this paragraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under regulations established by the Secretary.

(3) WORKING CONDITIONS.—The contract and bid specification shall contain a provision

specifying that no part of the services covered by this chapter may be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to provide the services.

(4) NOTICE.—The contract and bid specification shall contain a provision specifying that on the date a service employee begins work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2), on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYSTEMS.—The contract and bid specification shall contain a statement of the rates that would be paid by the Federal agency to each class of service employee if section 5332 or 5341 of title 5 were applicable to them. The Secretary shall give due consideration to these rates in making the wage and fringe benefit determinations specified in this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3812.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6703	41:351(a) (words before par. (1) related to required contract terms), (1)–(5).	Pub. L. 89–286, § 2(a) (words before par. (1) related to required contract terms), (1)–(5), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 92–473, §§ 1, 2, Oct. 9, 1972, 86 Stat. 789; Pub. L. 94–489, § 2, Oct. 13, 1976, 90 Stat. 2358.

EX. ORD. NO. 13495. NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

Ex. Ord. No. 13495, Jan. 30, 2009, 74 F.R. 6103, provided:

When a service contract expires, and a follow-on contract is awarded for the same service, at the same location, the successor contractor or its subcontractors often hires the majority of the predecessor's employees. On some occasions, however, a successor contractor or its subcontractors hires a new work force, thus displacing the predecessor's employees.

The Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees. A carryover work force reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained work force that is familiar with the Federal Government's personnel, facilities, and requirements.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the Federal Government that service contracts and solicitations for such contracts shall include a clause that requires the contractor, and its subcontractors, under a contract that succeeds a contract for performance of the same or similar services at the same location, to offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. There shall be no employment openings under the contract until such right of first refusal has been provided. Nothing in this order shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive Order or law of the United States.

SEC. 2. *Definitions*.

(a) ''Service contract'' or ''contract'' means any contract or subcontract for services entered into by the Federal Government or its contractors that is covered by the Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.*, and its implementing regulations.

(b) ''Employee'' means a service employee as defined in the Service Contract Act of 1965, 41 U.S.C. 357(b).

SEC. 3. *Exclusions*. This order shall not apply to:

(a) contracts or subcontracts under the simplified acquisition threshold as defined in 41 U.S.C. 403;

(b) contracts or subcontracts awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46–48c;

(c) guard, elevator operator, messenger, or custodial services provided to the Federal Government under contracts or subcontracts with sheltered workshops employing the severely handicapped as described in section 505 of the Treasury, Postal Services [sic] and General Government Appropriations Act, 1995, Public Law 103–329;

(d) agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph-Sheppard Act, 20 U.S.C. 107; or

(e) employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of this order.

SEC. 4. *Authority to Exempt Contracts*. If the head of a contracting department or agency finds that the application of any of the requirements of this order would not serve the purposes of this order or would impair the ability of the Federal Government to procure services on an economical and efficient basis, the head of such department or agency may exempt its department or agency from the requirements of any or all of the provisions of this order with respect to a particular contract, subcontract, or purchase order or any class of contracts, subcontracts, or purchase orders.

SEC. 5. *Contract Clause*. The following contract clause shall be included in solicitations for and service contracts that succeed contracts for performance of the same or similar work at the same location:

''NONDISPLACEMENT OF QUALIFIED WORKERS

''(a) Consistent with the efficient performance of this contract, the contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which employees are qualified. The contractor and its subcontractors shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Except as provided in paragraph (b) there shall be no employment opening under this contract, and the contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation. The contractor and its subcontractors shall make an express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days.

''(b) Notwithstanding the obligation under paragraph (a) above, the contractor and any subcontractors (1) may employ under this contract any employee who has

worked for the contractor or subcontractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (2) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act of 1965, as amended, 41 U.S.C. 357(b), and (3) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

''(c) In accordance with Federal Acquisition Regulation 52.222–41(n), the contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. The Contracting Officer will provide the list to the successor contractor, and the list shall be provided on request to employees or their representatives.

''(d) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the contractor or its subcontractors, as provided in Executive Order (No.) _____ [13495], the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

''(e) In every subcontract entered into in order to perform services under this contract, the contractor will include provisions that ensure that each subcontractor will honor the requirements of paragraphs (a) through (b) with respect to the employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor contractor and its subcontractors. The subcontract shall also include provisions to ensure that the subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with paragraph 5(c), above. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: provided, however, that if the contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into such litigation to protect the interests of the United States.''

SEC. 6. *Enforcement*. (a) The Secretary of Labor (Secretary) is responsible for investigating and obtaining compliance with this order. In such proceedings, the Secretary shall have the authority to issue final orders prescribing appropriate sanctions and remedies, including, but not limited to, orders requiring employment and payment of wages lost. The Secretary also may provide that where a contractor or subcontractor has failed to comply with any order of the Secretary or has committed willful violations of this order or the regulations issued pursuant thereto, the contractor or subcontractor, and its responsible officers, and any firm in which the contractor or subcontractor has a substantial interest, shall be ineligible to be awarded any contract of the United States for a period of up to 3 years. Neither an order for debarment of any contractor or subcontractor from further Government contracts under this section nor the inclusion of a contractor or subcontractor on a published list of noncomplying contractors shall be carried out without affording the contractor or subcontractor an opportunity for a hearing.

(b) This order creates no rights under the Contract Disputes Act [of 1978] [see 41 U.S.C. 7101 et seq.], and disputes regarding the requirement of the contract clause prescribed by section 5 of this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under this order. To the extent practicable, such regulations shall favor the resolution of disputes by efficient and informal alternative dispute resolution methods. The Secretary shall, in consultation with the Federal Acquisition Regulatory Council, issue regulations, within 180 days of the date of this order, to the extent permitted by law, to implement the requirements of this order. The Federal Acquisition Regulatory Council shall issue, within 180 days of the date of this order, to the extent permitted by law, regulations in the Federal Acquisition Regulation to provide for inclusion of the contract clause in Federal solicitations and contracts subject to this order.

SEC. 7. *Revocation*. Executive Order 13204 of February 17, 2001, is revoked.

SEC. 8. *Severability*. If any provision of this order, or the application of such provision or amendment to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 9. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. This order is not intended, however, to preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq*.

SEC. 10. *Effective Date*. This order shall become effective immediately and shall apply to solicitations issued on or after the effective date for the action taken by the Federal Acquisition Regulatory Council under section 6(b) of this order.

BARACK OBAMA.

§ 6704. Limitation on minimum wage

(a) IN GENERAL.—A contractor that makes a contract with the Federal Government, the principal purpose of which is to furnish services through the use of service employees, and any subcontractor, may not pay less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in performing work on the contract.

(b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to a violation of this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3813.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6704	41:351(b).	Pub. L. 89–286, § 2(b), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 94–489, § 1(b), Oct. 13, 1976, 90 Stat. 2358.

§ 6705. Violations

(a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a violation of a contract provision required under section 6703(1) or (2) of this

title or a violation of section 6704 of this title is liable for an amount equal to the sum of any deduction, rebate, refund, or underpayment of compensation due any employee engaged in the performance of the contract.

(b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

(1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The total amount determined under subsection (a) to be due any employee engaged in the performance of a contract may be withheld from accrued payments due on the contract or on any other contract between the same contractor and the Federal Government. The amount withheld shall be held in a deposit fund. On order of the Secretary, the compensation found by the Secretary or the head of a Federal agency to be due an underpaid employee pursuant to this chapter shall be paid from the deposit fund directly to the underpaid employee.

(2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued payments withheld under the terms of the contract are insufficient to reimburse a service employee with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the Federal Government may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayment. Any amount recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee. Any amount not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury as miscellaneous receipts.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to other actions in accordance with this section, when a violation of any contract stipulation is found, the Federal agency that made the contract may cancel the contract on written notice to the original contractor. The Federal Government may then make other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(d) ENFORCEMENT OF SECTION.—In accordance with regulations prescribed pursuant to section 6707(a)–(d) of this title, the Secretary or the head of a Federal agency may carry out this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3814.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6705(a)	41:352(a) (1st sentence).	Pub. L. 89–286, §§ 3, 5(b), Oct. 22, 1965, 79 Stat. 1035.
6705(b)(1)	41:352(a) (2d–last sentences).	
6705(b)(2)	41:354(b)	
6705(c)	41:352(c).	
6705(d)	41:352(b).	

In subsection (c), the words ''to other actions in accordance with this section'' are added for clarity.

§ 6706. Three-year prohibition on new contracts in case of violation

(a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to each agency of the Federal Government a list containing the names of persons or firms that a Federal agency or the Secretary has found to have violated this chapter.

(b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends otherwise because of unusual circumstances, a Federal Government contract may not be awarded to a person or firm named on the list under subsection (a), or to an entity in which the person or firm has a substantial interest, until 3 years have elapsed from the date of publication of the list. If the Secretary does not recommend otherwise because of unusual circumstances, the Secretary shall, not later than 90 days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the person or firm found to have violated this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3814.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6706(a)	41:354(a) (1st sentence).	Pub. L. 89–286, § 5(a) (1st sentence), Oct. 22, 1965, 79 Stat. 1035.
6706(b)	41:354(a) (2d–last sentences).	Pub. L. 89–286, § 5(a) (2d–last sentences), Oct. 22, 1965, 79 Stat. 1035; Pub. L. 92–473, § 4, Oct. 9, 1972, 86 Stat. 790.

In subsection (b), the word ''entity'' is substituted for ''firm, corporation, partnership, or association'' to use a single broad term clarifying that the prohibition applies to any kind of organization in which the person or firm has a substantial interest. The words ''containing the name of such persons or firms'' are omitted as unnecessary. The word ''person'' is substituted for ''individual'' for consistency in the subsection.

§ 6707. Enforcement and administration of chapter

(a) ENFORCEMENT OF CHAPTER.—Sections 6506 and 6507 of this title govern the Secretary's authority to enforce this chapter, including the Secretary's authority to prescribe regulations, issue orders, hold hearings, make decisions based on findings of fact, and take other appropriate action under this chapter.

(b) LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide reasonable limitations and may prescribe regulations allowing reasonable variation, tolerances, and exemptions with respect to this chapter (other than subsection (f)), but only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Federal Government business, and is in accord with the remedial purpose of this chapter to protect prevailing labor standards.

(c) PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDECESSOR CONTRACTS.—

(1) IN GENERAL.—Under a contract which succeeds a contract subject to this chapter, and under which substantially the same services are furnished, a contractor or subcontractor may not pay a service employee less than the wages and fringe benefits the service employee

would have received under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations.

(2) EXCEPTION.—This subsection does not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that wages and fringe benefits under the predecessor contract are substantially at variance with wages and fringe benefits prevailing in the same locality for services of a similar character.

(d) DURATION OF CONTRACTS.—Subject to limitations in annual appropriation acts but notwithstanding any other law, a contract to which this chapter applies may, if authorized by the Secretary, be for any term of years not exceeding 5, if the contract provides for periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 6703 of this title at least once every 2 years during the term of the contract, covering each class of service employee.

(e) EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVERTIME PAY.—In determining any overtime pay to which a service employee is entitled under Federal law, the regular or basic hourly rate of pay of the service employee does not include any fringe benefit payments computed under this chapter which are excluded from the definition of ''regular rate'' under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(f) TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.—It is the intent of Congress that determinations of minimum wages and fringe benefits under section 6703(1) and (2) of this title should be made as soon as administratively feasible for all contracts subject to this chapter. In any event, the Secretary shall at least make the determinations for contracts under which more than 5 service employees are to be employed.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3815.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6707(a)–(d) ..	41:353.	Pub. L. 89–286, § 4, Oct. 22, 1965, 79 Stat. 1035; Pub. L. 92–473, § 3, Oct. 9, 1972, 86 Stat. 789.
6707(e)	41:355.	Pub. L. 89–286, § 6, Oct. 22, 1965, 79 Stat. 1035.
6707(f)	41:358.	Pub. L. 89–286, § 10, as added Pub. L. 92–473, § 5, Oct. 9, 1972, 86 Stat. 790; Pub. L. 94–273, § 29, Apr. 21, 1976, 90 Stat. 380.

In subsection (e), the words ''the definition of 'regular rate' under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))'' are substituted for ''the regular rate under the Fair Labor Standards Act by provisions of section 7(d) thereof'' for clarity, to correct the reference to ''the Fair Labor Standards Act'' in accordance with section 1 of the Fair Labor Standards Act of 1938 (29:201), which provided the short title for the Act, and to correct the reference to ''section 7(d) thereof'' in accordance with section 204(d)(1) of the Fair Labor Standards Amendments of 1966 (Public Law 89–601, 80 Stat. 836), which amended the Fair Labor Standards Act of 1938 by redesignating section 7(d) as 7(e).

In subsection (f), the words ''paragraphs (1) and (2) of section 2'', which appear in section 10 of the Service Contract Act of 1965, as added by section 5 of Public Law 92–473 (86 Stat. 790), are treated as a reference to paragraphs (1) and (2) of section 2(a) of the Service Contract Act of 1965 to reflect the probable intent of Congress. The words ''which are entered into during the applicable fiscal year'', 41:358(1)–(4), and the words ''On and after July 1, 1976'' are omitted as obsolete.

Subtitle III—Contract Disputes

Chapter Sec.
71. Contract Disputes 7101

CHAPTER 71—CONTRACT DISPUTES

Sec.
7101. Definitions.
7102. Applicability of chapter.
7103. Decision by contracting officer.
7104. Contractor's right of appeal from decision by contracting officer.
7105. Agency boards.
7106. Agency board procedures for accelerated and small claims.
7107. Judicial review of agency board decisions.
7108. Payment of claims.
7109. Interest.

§ 7101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

(2) AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.—The term ''agency board'' or ''agency board of contract appeals'' means—

(A) the Armed Services Board;

(B) the Civilian Board;

(C) the board of contract appeals of the Tennessee Valley Authority; or

(D) the Postal Service Board established under section 7105(d)(1) of this title.

(3) AGENCY HEAD.—The term ''agency head'' means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

(4) ARMED SERVICES BOARD.—The term ''Armed Services Board'' means the Armed Services Board of Contract Appeals established under section 7105(a)(1) of this title.

(5) CIVILIAN BOARD.—The term ''Civilian Board'' means the Civilian Board of Contract Appeals established under section 7105(b)(1) of this title.

(6) CONTRACTING OFFICER.—The term ''contracting officer''—

(A) means an individual who, by appointment in accordance with applicable regulations, has the authority to make and administer contracts and to make determinations and findings with respect to contracts; and

(B) includes an authorized representative of the contracting officer, acting within the limits of the representative's authority.

(7) CONTRACTOR.—The term ''contractor'' means a party to a Federal Government contract other than the Federal Government.

(8) EXECUTIVE AGENCY.—The term ''executive agency'' means—

(A) an executive department as defined in section 101 of title 5;

(B) a military department as defined in section 102 of title 5;

(C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; and

(D) a wholly owned Government corporation as defined in section 9101(3) of title 31.

(9) MISREPRESENTATION OF FACT.—The term ''misrepresentation of fact'' means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3816.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7101	41:601.	Pub. L. 95–563, § 2, Nov. 1, 1978, 92 Stat. 2383; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(5), Feb. 10, 1996, 110 Stat. 677; Pub. L. 109–163, div. A, title VIII, § 847(d)(1), Jan. 6, 2006, 119 Stat. 3393.

In paragraph (8)(C), the words ''Government Accountability Office'' are substituted for ''General Accounting Office'' because of section 8(b) of the GAO Human Capital Reform Act of 2004 (Public Law 108–271, 118 Stat. 814, 31 U.S.C. 702 note).

In paragraph (8)(D), the words ''section 9101(3) of title 31'' are substituted for ''section 846 of title 31'' because of section 4(b) of Public Law 97–258 (31 U.S.C. note prec. 101).

§ 7102. Applicability of chapter

(a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically provided in this chapter, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair, or maintenance of real property; or

(4) the disposal of personal property.

(b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

(1) IN GENERAL.—With respect to contracts of the Tennessee Valley Authority, this chapter applies only to contracts containing a clause that requires contract disputes to be resolved through an agency administrative process.

(2) EXCLUSION.—Notwithstanding any other provision of this chapter, this chapter does not apply to a contract of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system.

(c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CONTRACTS.—If an agency head determines that applying this chapter would not be in the public interest, this chapter does not apply to a contract with a foreign government, an agency of a foreign government, an international organization, or a subsidiary body of an international organization.

(d) MARITIME CONTRACTS.—Appeals under section 7107(a) of this title and actions brought under sections 7104(b) and 7107(b) to (f) of this title, arising out of maritime contracts, are governed by chapter 309 or 311 of title 46, as applicable, to the extent that those chapters are not inconsistent with this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3817.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7102(a)–(c) ..	41:602.	Pub. L. 95–563, §§ 3, 4, Nov. 1, 1978, 92 Stat. 2383.
7102(d)	41:603.	

In subsection (c), the words ''an agency head'' are substituted for ''the head of the agency'' for consistency with the defined term ''agency head'' in section 7101 of the revised title.

In subsection (d), the words ''chapter 309 or 311 of title 46'' are substituted for ''the Act of March 9, 1920, as amended (41 Stat. 525, as amended; 46 U.S.C. 741–752) or the Act of March 3, 1925, as amended (43 Stat. 1112, as amended; 46 U.S.C. 781–790)'' in section 4 of the Contract Disputes Act of 1978 (Public Law 95–563, 92 Stat. 2384) because of section 18(c) of Public Law 109–304 (46 U.S.C. note prec. 101).

§ 7103. Decision by contracting officer

(a) CLAIMS GENERALLY.—

(1) SUBMISSION OF CONTRACTOR'S CLAIMS TO CONTRACTING OFFICER.—Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) CONTRACTOR'S CLAIMS IN WRITING.—Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

(3) CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT'S CLAIMS.—Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.

(4) TIME FOR SUBMITTING CLAIMS.—

(A) IN GENERAL.—Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

(B) EXCEPTION.—Subparagraph (A) of this paragraph does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(5) APPLICABILITY.—The authority of this subsection and subsections (c)(1), (d), and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

(b) CERTIFICATION OF CLAIMS.—

(1) REQUIREMENT GENERALLY.—For claims of more than $100,000 made by a contractor, the contractor shall certify that—

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

(2) WHO MAY EXECUTE CERTIFICATION.—The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

(3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—A contracting officer is not obligated to render a final decision on a claim of more than $100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

(c) FRAUDULENT CLAIMS.—

(1) NO AUTHORITY TO SETTLE.—This section does not authorize an agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(2) LIABILITY OF CONTRACTOR.—If a contractor is unable to support any part of the contractor's claim and it is determined that the inability is attributable to a misrepresentation of fact or fraud by the contractor, then the contractor is liable to the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government's costs attributable to reviewing the unsupported part of the claim. Liability under this paragraph shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(d) ISSUANCE OF DECISION.—The contracting officer shall issue a decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor.

(e) CONTENTS OF DECISION.—The contracting officer's decision shall state the reasons for the decision reached and shall inform the contractor of the contractor's rights as provided in this chapter. Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.

(f) TIME FOR ISSUANCE OF DECISION.—

(1) CLAIM OF $100,000 OR LESS.—A contracting officer shall issue a decision on any submitted claim of $100,000 or less within 60 days from the contracting officer's receipt of a written request from the contractor that a decision be rendered within that period.

(2) CLAIM OF MORE THAN $100,000.—A contracting officer shall, within 60 days of receipt of a submitted certified claim over $100,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) GENERAL REQUIREMENT OF REASONABLENESS.—The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations prescribed by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor.

(4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED TIME PERIOD.—A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.—Failure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim as otherwise provided in this chapter. However, the tribunal concerned may, at its option, stay the proceedings of the appeal or action to obtain a decision by the contracting officer.

(g) FINALITY OF DECISION UNLESS APPEALED.—The contracting officer's decision on a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by this chapter. This chapter does not prohibit an executive agency from including a clause in a Federal Government contract requiring that, pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(h) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. All provisions of subchapter IV of chapter 5 of title 5 apply to alternative means of dispute resolution under this subsection.

(2) CERTIFICATION OF CLAIM.—The contractor shall certify the claim when required to do so under subsection (b)(1) or other law.

(3) REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION.—

(A) CONTRACTING OFFICER.—A contracting officer who rejects a contractor's request for alternative dispute resolution proceedings shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or other specific reasons that alternative dispute resolution procedures are inappropriate.

(B) CONTRACTOR.—A contractor that rejects an agency's request for alternative dispute resolution proceedings shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3817.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7103(a)(1)	41:605(a) (1st sentence related to submission).	Pub. L. 95–563, §§5, 6(a) (1st, 2d, 5th–last sentences), (b), (c)(3), (5), Nov. 1, 1978, 92 Stat. 2384, 2385.
7103(a)(2)	41:605(a) (1st sentence related to writing requirement).	
7103(a)(3)	41:605(a) (2d sentence).	
7103(a)(4)(A)	41:605(a) (3d sentence).	Pub. L. 95–563, §6(a) (3d, 4th sentences), Nov. 1, 1978, as added Pub. L. 103–355, title II, §2351(a)(1), Oct. 13, 1994, 108 Stat. 3322, amended Pub. L. 104–106, div. D, title XLIII, §4321(a)(6), Feb. 10, 1996, 110 Stat. 671.
7103(a)(4)(B)	41:605(a) (4th sentence).	
7103(a)(5)	41:605(a) (8th sentence).	
7103(b)(1)	41:605(c)(1) (last sentence).	Pub. L. 95–563, §6(c)(1) (last sentence), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 102–572, title IX, §907(a)(1)(A), Oct. 29, 1992, 106 Stat. 4518; Pub. L. 103–355, title II, §2351(b), Oct. 13, 1994, 108 Stat. 3322.
7103(b)(2)	41:605(c)(7).	Pub. L. 95–563, §6(c)(6), (7), as added Pub. L. 102–572, title IX, §907(a)(1)(B), Oct. 29, 1992, 106 Stat. 4518.
7103(b)(3)	41:605(c)(6).	
7103(c)(1)	41:605(a) (last sentence).	
7103(c)(2)	41:604.	
7103(d)	41:605(a) (5th sentence).	
7103(e)	41:605(a) (6th, 7th sentences).	
7103(f)(1)	41:605(c)(1) (1st sentence).	Pub. L. 95–563, §6(c)(1) (1st sentence), (2), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 103–355, title II, §2351(b), Oct. 13, 1994, 108 Stat. 3322.
7103(f)(2)	41:605(c)(2).	
7103(f)(3)	41:605(c)(3).	
7103(f)(4)	41:605(c)(4).	Pub. L. 95–563, §6(c)(4), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 103–355, title II, §2351(e), Oct. 13, 1994, 108 Stat. 3322.
7103(f)(5)	41:605(c)(5).	
7103(g)	41:605(b).	
7103(h)(1)	41:605(d) (1st, last sentences).	Pub. L. 95–563, §6(d) (1st, last sentences), as added Pub. L. 101–552, §6(a), Nov. 15, 1990, 104 Stat. 2745, 2746; Pub. L. 104–106, div. D, title XLIII, §4322(b)(6), Feb. 10, 1996, 110 Stat. 677; Pub. L. 105–85, div. A, title X, §1073(g)(3), Nov. 18, 1997, 111 Stat. 1906.
7103(h)(2)	41:605(d) (2d sentence).	Pub. L. 95–563, §6(d) (2d sentence), as added Pub. L. 101–552, §6(a), Nov. 15, 1990, 104 Stat. 2745; Pub. L. 104–320, §6(1), Oct. 19, 1996, 110 Stat. 3871.
7103(h)(3)(A)	41:605(e) (1st sentence).	Pub. L. 95–563, §6(e), as added Pub. L. 101–552, §6(a), Nov. 15, 1990, 104 Stat. 2746; Pub. L. 103–355, title II, §2352, Oct. 13, 1994, 108 Stat. 3322; Pub. L. 104–106, div. D, title XLIII, §§4321(a)(7), 4322(b)(6), Feb. 10, 1996, 110 Stat. 671, 677; Pub. L. 104–320, §6(2), Oct. 19, 1996, 110 Stat. 3871; Pub. L. 105–85, div. A, title X, §1073(g)(3), Nov. 18, 1997, 111 Stat. 1906.
7103(h)(3)(B)	41:605(e) (last sentence).	

In subsection (b)(1)(D) and (2), the word ''duly'' is omitted as unnecessary.

In subsection (b)(3), the words ''of contract appeals'' are omitted as unnecessary because of the definition of ''agency board'' in section 7101 of the revised title.

In subsection (c)(2), the words ''this subsection'', which appear in section 5 of the Contract Disputes Act of 1978 (Pub. L. 95–563, 92 Stat. 2384), and which were probably intended to mean ''this section'', are translated as ''this paragraph'' in accordance with the probable intent of Congress.

In subsection (f)(5), the words ''the commencement of'' are omitted as unnecessary. The words ''of the appeal or action'' are substituted for ''in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer'' to eliminate unnecessary words.

§ 7104. Contractor's right of appeal from decision by contracting officer

(a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the date of receipt of a contracting officer's decision under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.

(b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

(1) IN GENERAL.—Except as provided in paragraph (2), and in lieu of appealing the decision of a contracting officer under section 7103 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) TENNESSEE VALLEY AUTHORITY.—In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a district court of the United States pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) TIME FOR FILING.—A contractor shall file any action under paragraph (1) or (2) within 12 months from the date of receipt of a contracting officer's decision under section 7103 of this title.

(4) DE NOVO.—An action under paragraph (1) or (2) shall proceed de novo in accordance with the rules of the appropriate court.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3820.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7104(a)	41:606.	Pub. L. 95–563, §7, Nov. 1, 1978, 92 Stat. 2385.
7104(b)	41:609(a).	Pub. L. 95–563, §10(a), Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97–164, title I, §161(10), Apr. 2, 1982, 96 Stat. 49.

In subsection (a), the words ''of contract appeals'' are omitted as unnecessary because of the definition of ''agency board'' in section 7101 of the revised title.

In subsection (b)(1), the words ''United States Court of Federal Claims'' are substituted for ''United States Claims Court'' because of section 902(b)(1) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572, 106 Stat. 4516, 28 U.S.C. 171 note).

§ 7105. Agency boards

(a) ARMED SERVICES BOARD.—

(1) ESTABLISHMENT.—An Armed Services Board of Contract Appeals may be established within the Department of Defense when the Secretary of Defense, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least 3 members who shall have

no other inconsistent duties. Workload studies will be updated at least once every 3 years and submitted to the Administrator.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Armed Services Board shall be selected and appointed in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years of experience in public contract law. The Secretary of Defense shall designate the chairman and vice chairman of the Armed Services Board from among the appointed members. Compensation for the chairman, vice chairman, and other members shall be determined under section 5372a of title 5.

(b) CIVILIAN BOARD.—

(1) ESTABLISHMENT.—There is established in the General Services Administration the Civilian Board of Contract Appeals.

(2) MEMBERSHIP.—

(A) ELIGIBILITY.—The Civilian Board consists of members appointed by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) from a register of applicants maintained by the Administrator of General Services, in accordance with rules issued by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) for establishing and maintaining a register of eligible applicants and selecting Civilian Board members. The Administrator of General Services shall appoint a member without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Civilian Board member.

(B) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Civilian Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years experience in public contract law. Compensation for the members shall be determined under section 5372a of title 5.

(3) REMOVAL.—Members of the Civilian Board are subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5.

(4) FUNCTIONS.—

(A) IN GENERAL.—The Civilian Board has jurisdiction as provided by subsection (e)(1)(B).

(B) ADDITIONAL JURISDICTION.—With the concurrence of the Federal agencies affected, the Civilian Board may assume—

(i) jurisdiction over any additional category of laws or disputes over which an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act exercised jurisdiction before January 6, 2007; and

(ii) any other function the agency board performed before January 6, 2007, on behalf of those agencies.

(c) TENNESSEE VALLEY AUTHORITY BOARD.—

(1) ESTABLISHMENT.—The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals of the Tennessee Valley Authority of an indeterminate number of members.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to the agency board established under paragraph (1), and shall designate a chairman of the agency board. The chairman and other members of the agency board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the agency board.

(d) POSTAL SERVICE BOARD.—

(1) ESTABLISHMENT.—There is established an agency board of contract appeals known as the Postal Service Board of Contract Appeals.

(2) APPOINTMENT AND SERVICE OF MEMBERS.—The Postal Service Board of Contract Appeals consists of judges appointed by the Postmaster General. The judges shall meet the qualifications of and serve in the same manner as members of the Civilian Board.

(3) APPLICATION.—This chapter applies to contract disputes before the Postal Service Board of Contract Appeals in the same manner as it applies to contract disputes before the Civilian Board.

(e) JURISDICTION.—

(1) IN GENERAL.—

(A) ARMED SERVICES BOARD.—The Armed Services Board has jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency.

(B) CIVILIAN BOARD.—The Civilian Board has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency.

(C) POSTAL SERVICE BOARD.—The Postal Service Board of Contract Appeals has jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency.

(D) OTHER AGENCY BOARDS.—Each other agency board has jurisdiction to decide any appeal from a decision of a contracting officer relative to a contract made by its agency.

(2) RELIEF.—In exercising this jurisdiction, an agency board may grant any relief that would be available to a litigant asserting a

contract claim in the United States Court of Federal Claims.

(f) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General, or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring the person to appear before the agency board or a member of the agency board, to produce evidence or to give testimony, or both. Any failure of the person to obey the order of the court may be punished by the court as contempt of court.

(g) DECISIONS.—An agency board shall—

(1) to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes;

(2) issue a decision in writing or take other appropriate action on each appeal submitted; and

(3) mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3820; Pub. L. 111–259, title IV, § 422, Oct. 7, 2010, 124 Stat. 2727; Pub. L. 111–383, div. A, title X, § 1075(*o*), Jan. 7, 2011, 124 Stat. 4378.)

AMENDMENTS NOT SHOWN IN TEXT

Subsecs. (b) and (e)(1)(A), (B), (D) and (2) of this section were derived from sections 438 and 607(d), respectively, of former Title 41, Public Contracts. Sections 438 and 607(d) were amended by Pub. L. 111–383, div. A, title X, § 1075(o), Jan. 7, 2011, 124 Stat. 4378, and Pub. L. 111–259, title IV, § 422, Oct. 7, 2010, 124 Stat. 2727, respectively, prior to being repealed and reenacted as subsecs. (b) and (e)(1)(A), (B), (D) and (2) of this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For applicability of those amendments to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 438 of former Title 41 was amended in subsec. (c)(1) by striking ''(41 U.S.C. 607(b))'' and inserting ''(41 U.S.C. 607(d))'' and in subsec. (c)(2)(A) by inserting ''of 1978'' after ''Contract Disputes Act''. Section 607(d) of former Title 41 was amended by adding at the end ''Notwithstanding any other provision of this section and any other provision of law, an appeal from a decision of a contracting officer of the Central Intelligence Agency relative to a contract made by that Agency may be filed with whichever of the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals is specified by such contracting officer as the Board to which such an appeal may be made and such Board shall have jurisdiction to decide that appeal.''

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7105(a)	41:607(a)(1), (b)(1).	Pub. L. 95–563, § 8(a)(1), (b)(1), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 101–509, title V, § 529 [title I, § 104(d)(4)], Nov. 5, 1990, 104 Stat. 1447; Pub. L. 109–163, div. A, title VIII, § 847(d)(3), Jan. 6, 2006, 119 Stat. 3394.
7105(b)	41:438.	Pub. L. 93–400, § 42, as added Pub. L. 109–163, div. A, title VIII, § 847(a), Jan. 6, 2006, 119 Stat. 3391.
7105(c)	41:607(a)(2), (b)(2).	Pub. L. 95–563, § 8(a)(2), (b)(2), Nov. 1, 1978, 92 Stat. 2385, 2386.
7105(d)	41:607(c) (1st, 3d, last sentences).	Pub. L. 95–563, § 8(c), Nov. 1, 1978, 92 Stat. 2386; Pub. L. 109–163, div. A, title VIII, § 847(d)(2)(B), Jan. 6, 2006, 119 Stat. 3394.
7105(e)(1)(A), (B).	41:607(d) (1st, 2d sentences).	Pub. L. 95–563, § 8(d), Nov. 1, 1978, 92 Stat. 2386; Pub. L. 97–164, title I, § 160(a)(15), Apr. 2, 1982, 96 Stat. 48; Pub. L. 109–163, div. A, title VIII, § 847(d)(2)(A), Jan. 6, 2006, 119 Stat. 3393.
7105(e)(1)(C)	41:607(c) (2d sentence).	
7105(e)(1)(D)	41:607(d) (3d sentence).	
7105(e)(2)	41:607(d) (last sentence).	
7105(f)	41:610.	Pub. L. 95–563, § 11, Nov. 1, 1978, 92 Stat. 2388.
7105(g)	41:607(e).	Pub. L. 95–563, § 8(e), Nov. 1, 1978, 92 Stat. 2386.

In subsection (a)(2), the words ''administrative law judges'' are substituted for ''hearing examiners'' because of section 3 of Public Law 95–251 (5 U.S.C. 3105 note). The words ''Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified'' are omitted as obsolete.

In subsection (b), the text of 41 U.S.C. 438 (b)(1)(C) is omitted as obsolete.

In subsection (e)(1)(B) and (C), the words ''Postal Regulatory Commission'' are substituted for ''Postal Rate Commission'' because of section 604(f) of the Postal Accountability and Enhancement Act (Public Law 109–435, 120 Stat. 3242, 39 U.S.C. 404 note).

REFERENCES IN TEXT

Section 8 of the Contract Disputes Act, referred to in subsec. (b)(4)(B)(i), probably means section 8 of Pub. L. 95–563, the Contract Disputes Act of 1978, which was classified to former section 607 of this title prior to being repealed and reenacted as subsecs. (a), (c) to (e), and (g) of this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

§ 7106. Agency board procedures for accelerated and small claims

(a) ACCELERATED PROCEDURE WHERE $100,000 OR LESS IN DISPUTE.—The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $100,000 or less. The accelerated procedure is applicable at the sole election of the contractor. An appeal under the accelerated procedure shall be resolved, whenever possible, within 180 days from the date the contractor elects to use the procedure.

(b) SMALL CLAIMS PROCEDURE.—

(1) IN GENERAL.—The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in

dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and regulations under that Act), $150,000 or less. The small claims procedure is applicable at the sole election of the contractor.

(2) SIMPLIFIED RULES OF PROCEDURE.—The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. An appeal under the small claims procedure may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(3) TIME OF DECISION.—An appeal under the small claims procedure shall be resolved, whenever possible, within 120 days from the date the contractor elects to use the procedure.

(4) FINALITY OF DECISION.—A decision against the Federal Government or against the contractor reached under the small claims procedure is final and conclusive and may not be set aside except in cases of fraud.

(5) NO PRECEDENT.—Administrative determinations and final decisions under this subsection have no value as precedent for future cases under this chapter.

(6) REVIEW OF REQUISITE AMOUNTS IN CONTROVERSY.—The Administrator, from time to time, may review the dollar amounts specified in paragraph (1) and adjust the amounts in accordance with economic indexes selected by the Administrator.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3823.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7106(a)	41:607(f).	Pub. L. 95–563, § 8(f), Nov. 1, 1978, 92 Stat. 2386; Pub. L. 103–355, title II, § 2351(c), Oct. 13, 1994, 108 Stat. 3322.
7106(b)	41:608.	Pub. L. 95–563, § 9, Nov. 1, 1978, 92 Stat. 2387; Pub. L. 103–355, title II, § 2351(d), Oct. 13, 1994, 108 Stat 3322; Pub. L. 109–364, div. A, title VIII, § 857, Oct. 17, 2006, 120 Stat. 2349.

In subsection (a), the word ''only'' is omitted for consistency with a similar provision in 41:608(a) and because the word ''only'' is redundant with the word ''sole''.

In subsection (b)(6), the words ''from time to time, may review'' are substituted for ''is authorized to review at least every three years'' because the source law, while effectively granting the Administrator authority to conduct the reviews, does not require the Administrator to conduct any reviews, and does not restrict the number of reviews the Administrator may conduct during any time period. The words ''beginning with the third year after November 1, 1978'' are omitted as obsolete. The words ''the dollar amount specified in paragraph (1)'' are substituted for ''the dollar amount defined in subsection (a) of this section as a small claim'' to eliminate unnecessary words and because 41:608(a), restated as paragraph (1), does not explicitly provide a definition for the term ''small claim''.

SENATE REVISION AMENDMENT

In subsec. (b)(6), ''AMOUNTS'' substituted for ''AMOUNT'' in heading and ''amounts'' substituted for ''amount'' in two places in text by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18683 (2010).

§ 7107. Judicial review of agency board decisions

(a) REVIEW.—

(1) IN GENERAL.—The decision of an agency board is final, except that—

(A) a contractor may appeal the decision to the United States Court of Appeals for the Federal Circuit within 120 days from the date the contractor receives a copy of the decision; or

(B) if an agency head determines that an appeal should be taken, the agency head, with the prior approval of the Attorney General, may transmit the decision to the United States Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within 120 days from the date the agency receives a copy of the decision.

(2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph (1), a decision of the board of contract appeals of the Tennessee Valley Authority is final, except that—

(A) a contractor may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date the contractor receives a copy of the decision; or

(B) the Tennessee Valley Authority may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date of the decision.

(3) REVIEW OF ARBITRATION.—An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 to 13 of title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

(b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW AND FACT.—Notwithstanding any contract provision, regulation, or rule of law to the contrary, in an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a)—

(1) the decision of the agency board on a question of law is not final or conclusive; but

(2) the decision of the agency board on a question of fact is final and conclusive and may not be set aside unless the decision is—

(A) fraudulent, arbitrary, or capricious;

(B) so grossly erroneous as to necessarily imply bad faith; or

(C) not supported by substantial evidence.

(c) REMAND.—In an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a), the court may render an opinion and judgment and remand the case for further action by the agency board or by the executive agency as appropriate, with direction the court considers just and proper.

(d) CONSOLIDATION.—If 2 or more actions arising from one contract are filed in the United States Court of Federal Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the United States Court of Federal Claims may order the consolidation of the actions in that court or transfer any actions to or among the agency boards involved.

(e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an action filed pursuant to this chapter involving 2 or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one of the claims can be divided for purposes of decision or judgment, and in any action where multiple parties are involved, the court, whenever appropriate, may enter a judgment as to one or more but fewer than all of the claims or portions of claims or parties.

(f) ADVISORY OPINIONS.—

(1) IN GENERAL.—Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request an agency board to provide the court with an advisory opinion on the matters of contract interpretation under consideration.

(2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this chapter.

(3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district court shall direct a request under paragraph (1) to the agency board having jurisdiction under this chapter to adjudicate appeals of contract claims under the contract being interpreted by the court.

(4) TIMELY RESPONSE.—After receiving a request for an advisory opinion under paragraph (1), an agency board shall provide the advisory opinion in a timely manner to the district court making the request.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7107(a)	41:607(g).	Pub. L. 95–563, § 8(g), Nov. 1, 1978, 92 Stat. 2387; Pub. L. 97–164, title I, § 156, Apr. 2, 1982, 96 Stat. 47; Pub. L. 101–552, § 6(b), Nov. 15, 1990, 104 Stat. 2746.
7107(b)	41:609(b).	Pub. L. 95–563, § 10(b), (e), Nov. 1, 1978, 92 Stat. 2388.
7107(c)	41:609(c).	Pub. L. 95–563, § 10(c), Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97–164, title I, § 157, Apr. 2, 1982, 96 Stat. 47.
7107(d)	41:609(d).	Pub. L. 95–563, § 10(d), Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97–164, title I, § 160(a)(15), Apr. 2, 1982, 96 Stat. 48.
7107(e)	41:609(e).	
7107(f)	41:609(f).	Pub. L. 95–563, § 10(f), as added Pub. L. 103–355, title II, § 2354, Oct. 13, 1994, 108 Stat. 3323.

In subsection (a)(1)(B), the words ''may transmit'' are substituted for ''transmits'' to correct the grammatical structure of the provision in accordance with the probable intent of Congress. The words ''the decision'' are substituted for ''the decision of the board of contract appeals'' and for ''the board's decision'' to eliminate unnecessary words and for consistency with 41:607(g)(1)(A).

In subsection (a)(2)(B), the words ''in any case'' are omitted as unnecessary.

In subsection (d), the words ''United States Court of Federal Claims'' are substituted for ''United States Claims Court'' because of section 902(b)(1) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572, 106 Stat. 4516, 28 U.S.C. 171 note).

In subsection (f)(1), (3), and (4), the words ''agency board'' are substituted for ''board of contract appeals'' to eliminate unnecessary words and for consistency with the definition of ''agency board'' in section 7101 of the revised title.

In subsection (f)(1), the words ''under consideration'' are substituted for ''at issue'' to avoid potential confusion with the words ''issue described in paragraph (2)''.

§ 7108. Payment of claims

(a) JUDGMENTS.—Any judgment against the Federal Government on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) MONETARY AWARDS.—Any monetary award to a contractor by an agency board shall be paid promptly in accordance with the procedures contained in subsection (a).

(c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available amounts or by obtaining additional appropriations for purposes of reimbursement.

(d) TENNESSEE VALLEY AUTHORITY.—

(1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c), any monetary award to a contractor by the board of contract appeals of the Tennessee Valley Authority shall be paid in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3825.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7108	41:612.	Pub. L. 95–563, § 13, Nov. 1, 1978, 92 Stat. 2389; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(7), Feb. 10, 1996, 110 Stat. 677.

§ 7109. Interest

(a) PERIOD.—

(1) IN GENERAL.—Interest on an amount found due a contractor on a claim shall be paid to the contractor for the period beginning with the date the contracting officer receives the contractor's claim, pursuant to section 7103(a) of this title, until the date of payment of the claim.

(2) DEFECTIVE CERTIFICATION.—On a claim for which the certification under section 7103(b)(1) of this title is found to be defective, any interest due under this section shall be paid for the period beginning with the date the contracting officer initially receives the contractor's claim until the date of payment of the claim.

(b) RATE.—Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable for each successive 6-month period. The rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately 5 years.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3825.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7109(a)(1)	41:611 (1st sentence).	Pub. L. 95–563, § 12, Nov. 1, 1978, 92 Stat. 2389.
7109(a)(2)	41:611 note.	Pub. L. 102–572, title IX, § 907(a)(3), Oct. 29, 1992, 106 Stat. 4518.
7109(b)	41:611 (last sentence).	

In subsection (a)(2), the words ''on or after the date of the enactment of this Act'', ''the later of'', and ''or the date of the enactment of this Act'' are omitted as obsolete.

Subsection (b) is substituted for ''The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board'' to eliminate obsolete language and to codify the criteria under which the interest rate is computed. Section 2(a)(3) of the Act of July 1, 1971 (Pub. L. 92–41, 85 Stat. 97), amended section 105(b)(2) of the Renegotiation Act of 1951 (Mar. 23, 1951, ch. 15, 65 Stat. 13) by adding provisions substantially similar to those enacted here. However, the Renegotiation Act of 1951 (Mar. 23, 1951, ch. 15, 65 Stat. 7) was omitted from the Code pursuant to section 102(c)(1) of the Act (65 Stat. 8), amended several times, the last being Public Law 94–185 (89 Stat. 1061), which provided that most provisions of that Act do not apply to receipts and accruals attributable to contract performance after September 30, 1976, and in view of the termination of the Renegotiation Board and the transfer of property and records of the Board to the Administrator of the General Services Administration on March 31, 1979, pursuant to Public Law 95–431 (92 Stat. 1043). Although the Renegotiation Board is no longer in existence, Federal agencies, including the General Services Administration, are required to use interest rates that are computed under the criteria set out in this subsection. See 31:3902(a) and the website of the Bureau of the Public Debt, available at http://www.publicdebt.treas.gov/opd/opdprmt2.htm. For an example of publication of rates under the criteria enacted here, see Federal Register, volume 67, number 247, page 78566, December 24, 2002.

Subtitle IV—Miscellaneous

Chapter		Sec.
81.	**Drug-Free Workplace**	**8101**
83.	**Buy American**	**8301**
85.	**Committee for Purchase From People Who Are Blind or Severely Disabled**	**8501**
87.	**Kickbacks**	**8701**

CHAPTER 81—DRUG-FREE WORKPLACE

Sec.
8101. Definitions and construction.
8102. Drug-free workplace requirements for Federal contractors.
8103. Drug-free workplace requirements for Federal grant recipients.
8104. Employee sanctions and remedies.
8105. Waiver.
8106. Regulations.

§ 8101. Definitions and construction

(a) DEFINITIONS.—In this chapter:

(1) CONTRACTOR.—The term ''contractor'' means the department, division, or other unit of a person responsible for the performance under the contract.

(2) CONTROLLED SUBSTANCE.—The term ''controlled substance'' means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

(3) CONVICTION.—The term ''conviction'' means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

(4) CRIMINAL DRUG STATUTE.—The term ''criminal drug statute'' means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

(5) DRUG-FREE WORKPLACE.—The term ''drug-free workplace'' means a site of an entity—

(A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and

(B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4181).

(6) EMPLOYEE.—The term ''employee'' means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section 8102 or 8103 of this title.

(7) FEDERAL AGENCY.—The term ''Federal agency'' means an agency as defined in section 552(f) of title 5.

(8) GRANTEE.—The term ''grantee'' means the department, division, or other unit of a person responsible for the performance under the grant.

(b) CONSTRUCTION.—This chapter does not require law enforcement agencies to comply with this chapter if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3826.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8101(a)(1)	41:706(7).	Pub. L. 100–690, title V, §§ 5157, 5158, Nov. 18, 1988, 102 Stat. 4308.
8101(a)(2)	41:706(3).	
8101(a)(3)	41:706(4).	
8101(a)(4)	41:706(5).	
8101(a)(5)	41:706(1).	
8101(a)(6)	41:706(2).	
8101(a)(7)	41:706(8).	
8101(a)(8)	41:706(6).	
8101(b)	41:707.	

§ 8102. Drug-free workplace requirements for Federal contractors

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal

agency, other than a contract for the procurement of commercial items (as defined in section 103 of this title), unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—

(A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) EFFECT OF DEBARMENT.—A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3827.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8102	41:701.	Pub. L. 100–690, title V, § 5152, Nov. 18, 1988, 102 Stat. 4304; Pub. L. 103–355, title IV, § 4104(d), title VIII, § 8301(f), Oct. 13, 1994, 108 Stat. 3342, 3397; Pub. L. 104–106, div. D, title XLIII, §§ 4301(a)(3), 4321(i)(13), Feb. 10, 1996, 110 Stat. 656, 677.

§ 8103. Drug-free workplace requirements for Federal grant recipients

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity with the grant.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that—

(A) the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(B) the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.

(3) EFFECT OF DEBARMENT.—A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3828.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8103	41:702.	Pub. L. 100–690, title V, § 5153, Nov. 18, 1988, 102 Stat. 4306; Pub. L. 105–85, div. A, title VIII, § 809, Nov. 18, 1997, 111 Stat. 1838.

§ 8104. Employee sanctions and remedies

Within 30 days after receiving notice from an employee of a conviction pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a contractor or grantee shall—

(1) take appropriate personnel action against the employee, up to and including termination; or

(2) require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8104	41:703.	Pub. L. 100–690, title V, § 5154, Nov. 18, 1988, 102 Stat. 4307.

§ 8105. Waiver

(a) IN GENERAL.—The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if—

(1) in the case of a contract, the head of the agency determines under section 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or

(2) in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8105	41:704.	Pub. L. 100–690, title V, § 5155, Nov. 18, 1988, 102 Stat. 4307.

§ 8106. Regulations

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8106	41:705.	Pub. L. 100–690, title V, § 5156, Nov. 18, 1988, 102 Stat. 4308.

The words ''Not later than 90 days after November 18, 1988, the'' are omitted as obsolete.

CHAPTER 83—BUY AMERICAN

Sec.
8301. Definitions.
8302. American materials required for public use.
8303. Contracts for public works.
8304. Waiver rescission.
8305. Annual report.

§ 8301. Definitions

In this chapter:

(1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms ''public building'', ''public use'', and ''public work'' mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) UNITED STATES.—The term ''United States'' includes any place subject to the jurisdiction of the United States.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8301	41:10c.	Mar. 3, 1933, ch. 212, title III, § 1, 47 Stat. 1520; Pub. L. 86–70, § 43, June 25, 1959, 73 Stat. 151; Pub. L. 86–624, § 28, July 12, 1960, 74 Stat. 419; Pub. L. 100–418, title VII, § 7005(a), Aug. 23, 1988, 102 Stat. 1552.

In paragraph (1), the words ''the Philippine Islands'' are omitted because of Proclamation No. 2695 (22 U.S.C. 1394 note). The words ''the Canal Zone'' are omitted because of the Panama Canal Treaty of 1977.

In paragraph (2), the words ''when used in a geographical sense'' are omitted as unnecessary.

IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100–371, title V, § 508, July 19, 1988, 102 Stat. 875, provided that:

''(a) GENERAL RULE.—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; [former] 41 U.S.C. 10a–10c) [see 41 U.S.C. 8301 et seq.], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

''(b) APPLICABILITY.—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988].''

§ 8302. American materials required for public use

(a) IN GENERAL.—

(1) ALLOWABLE MATERIALS.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

(2) EXCEPTIONS.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 180 days after the end of each of fiscal years 2009 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include, for the fiscal year covered by the report—

(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

(B) an itemized list of all waivers granted with respect to the articles, materials, or supplies under this chapter, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase the articles, materials, or supplies; and

(D) a summary of—

(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under

paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).[1]

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3831.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8302	41:10a.	Mar. 3, 1933, ch. 212, title III, § 2, 47 Stat. 1520; Pub. L. 100–418, title VII, § 7005(b), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103–355, title IV, § 4301(b), Oct. 13, 1994, 108 Stat. 3347; Pub. L. 110–28 title VIII, § 8306, May 25, 2007, 121 Stat. 211.

In subsection (a), the words ''Notwithstanding any other provision of law'' are omitted as unnecessary.

In subsection (b)(1), reference to fiscal years 2007 and 2008 is omitted as obsolete.

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (b)(4), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§ 401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§ 3001 et seq.) of Title 50. Section 3 of the Act is now classified to section 3003 of Title 50. For complete classification of this Act to the Code, see Tables.

§ 8303. Contracts for public works

(a) IN GENERAL.—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—

(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and

(2) manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

(b) EXCEPTIONS.—

(1) IN GENERAL.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of the department or independent establishment making the contract finds that it is impracticable to comply with subsection (a) for a particular article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.

(3) INCONSISTENT WITH PUBLIC INTEREST.—Subsection (a) shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned determines their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(c) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bureau, agency, or independent establishment that has made a contract containing the provision required by subsection (a) finds that there has been a failure to comply with the provision in the performance of the contract, the head of the department, bureau, agency, or independent establishment shall make the findings public. The findings shall include the name of the contractor obligated under the contract. The contractor, and any subcontractor, material man, or supplier associated or affiliated with the contractor, shall not be awarded another contract for the construction, alteration, or repair of any public building or public work for 3 years after the findings are made public.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3832.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8303(a)	41:10b(a) (words before ''except as provided'').	Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520; Pub. L. 100–418, title VII, § 7005(c), Aug. 23, 1988, 102 Stat. 1553.
8303(b)(1)	41:10b(a) (''except as provided in section 10a of this title'').	
8303(b)(2)	41:10b(a) (proviso).	
8303(b)(3)	41:10d.	Oct. 29, 1949, ch. 787, title VI, § 633, 63 Stat. 1024; Pub. L. 100–418, title VII, § 7005(d), Aug. 23, 1988, 102 Stat. 1553.
8303(c)	41:10b(b).	

In subsection (a), before paragraph (1), the words ''growing out of an appropriation heretofore made or hereafter to be made'' are omitted as unnecessary.

Subsection (b)(1) is substituted for ''except as provided in section 10a of this title'' for clarity.

In subsection (b)(3), the words ''In order to clarify the original intent of Congress, hereafter, section 10a of this title'' are omitted as unnecessary.

In subsection (c), the words ''in the United States or elsewhere'' are omitted as unnecessary.

EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

[1] See References in Text note below.

SECTION 1. As used in this order, (a) the term ''materials'' includes articles and supplies, (b) the term ''executive agency'' includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term ''bid or offered price of materials of foreign origin'' means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [probably means act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, see 41 U.S.C. 8301 et seq.], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than $25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949, as amended [former 41 U.S.C. 252(b)] [now 41 U.S.C. 3104], [former] section 2(b) of the Armed Services Procurement Act of 1947, as amended, and [former] section 202 of the Small Business Act of 1953; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: *Provided*, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director [now Administrator] of the Federal Emergency Management Agency. In providing this advice the Director [Administrator] shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

§ 8304. Waiver rescission

(a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b) is a reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived this chapter for certain products in that country.

(b) DETERMINATION BY SECRETARY OF DEFENSE.—If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country that is party to an agreement described in subsection (a) has violated the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of this chapter with respect to those types of products produced in that country.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3833.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8304(a)	41:10b–2(a)(2), (b).	Pub. L. 103–160, div. A, title VIII, § 849(c), (d), Nov. 30, 1993, 107 Stat. 1725.
8304(b)	41:10b–2(a)(1).	

In subsection (a), the text of 41:10b–2(b) is omitted as unnecessary.

SIMILAR PROVISIONS

Provisions similar to those in this section and section 8305 of this title were contained in the following acts:

Pub. L. 114–113, div. C, title VIII, § 8028, Dec. 18, 2015, 129 Stat. 2357.

Pub. L. 113–235, div. C, title VIII, § 8028, Dec. 16, 2014, 128 Stat. 2258.

Pub. L. 113–76, div. C, title VIII, § 8027, Jan. 17, 2014, 128 Stat. 110.

Pub. L. 113–6, div. C, title VIII, § 8027, Mar. 26, 2013, 127 Stat. 302.

Pub. L. 112–74, div. A, title VIII, § 8027, Dec. 23, 2011, 125 Stat. 811.

Pub. L. 112–10, div. A, title VIII, § 8028, Apr. 15, 2011, 125 Stat. 63.

Pub. L. 111–118, div. A, title VIII, § 8030, Dec. 19, 2009, 123 Stat. 3435.

Pub. L. 110–329, div. C, title VIII, § 8030, Sept. 30, 2008, 122 Stat. 3627.

Pub. L. 110–116, div. A, title VIII, § 8029, Nov. 13, 2007, 121 Stat. 1321.

Pub. L. 109–289, div. A, title VIII, § 8027, Sept. 29, 2006, 120 Stat. 1279.

Pub. L. 109–148, div. A, title VIII, § 8030, Dec. 30, 2005, 119 Stat. 2705.

Pub. L. 108–287, title VIII, § 8032, Aug. 5, 2004, 118 Stat. 977.
Pub. L. 108–87, title VIII, § 8033, Sept. 30, 2003, 117 Stat. 1079.
Pub. L. 107–248, title VIII, § 8033, Oct. 23, 2002, 116 Stat. 1544.
Pub. L. 107–117, div. A, title VIII, § 8036, Jan. 10, 2002, 115 Stat. 2255.
Pub. L. 106–259, title VIII, § 8036, Aug. 9, 2000, 114 Stat. 682.
Pub. L. 106–79, title VIII, § 8038, Oct. 25, 1999, 113 Stat. 1239.
Pub. L. 105–262, title VIII, § 8038, Oct. 17, 1998, 112 Stat. 2305.
Pub. L. 105–56, title VIII, § 8040, Oct. 8, 1997, 111 Stat. 1229.
Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8042], Sept. 30, 1996, 110 Stat. 3009–71, 3009–97.
Pub. L. 104–61, title VIII, § 8051, Dec. 1, 1995, 109 Stat. 662.
Pub. L. 103–335, title VIII, § 8058, Sept. 30, 1994, 108 Stat. 2631.
Pub. L. 103–139, title VIII, § 8069, Nov. 11, 1993, 107 Stat. 1455.
Pub. L. 102–396, title IX, § 9096, Oct. 6, 1992, 106 Stat. 1924, as amended by Pub. L. 103–355, title VII, § 7206(b), Oct. 13, 1994, 108 Stat. 3382.
Pub. L. 102–190, div. A, title VIII, § 833, Dec. 5, 1991, 105 Stat. 1447.
Pub. L. 102–172, title VIII, § 8123, Nov. 26, 1991, 105 Stat. 1205.
Pub. L. 101–189, div. A, title VIII, § 823, Nov. 29, 1989, 103 Stat. 1504.

§ 8305. Annual report

Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the amount of purchases by the Department of Defense from foreign entities in that fiscal year. The report shall separately indicate the dollar value of items for which this chapter was waived pursuant to—

(1) a reciprocal defense procurement memorandum of understanding described in section 8304(a) of this title;

(2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

(3) an international agreement to which the United States is a party.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3833.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8305	41:10b–3.	Pub. L. 104–201, div. A, title VIII, § 827, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105–85, div. A, title VIII, § 846, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 105–261, div. A, title VIII, § 812, Oct. 17, 1998, 112 Stat. 2086.

CHAPTER 85—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Sec.
8501. Definitions.
8502. Committee for Purchase From People Who Are Blind or Severely Disabled.
8503. Duties and powers of the Committee.
8504. Procurement requirements for the Federal Government.
8505. Audit.
8506. Authorization of appropriations.

§ 8501. Definitions

In this chapter:

(1) BLIND.—The term ''blind'' refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) COMMITTEE.—The term ''Committee'' means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of this title.

(3) DIRECT LABOR.—The term ''direct labor''—

(A) includes all work required for preparation, processing, and packing of a product, or work directly relating to the performance of a service; but

(B) does not include supervision, administration, inspection, or shipping.

(4) ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERNMENT.—The terms ''entity of the Federal Government'' and ''Federal Government'' include an entity of the legislative or judicial branch, a military department or executive agency (as defined in sections 102 and 105 of title 5, respectively), the United States Postal Service, and a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(5) OTHER SEVERELY DISABLED.—The term ''other severely disabled'' means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DISABLED.—The term ''qualified nonprofit agency for other severely disabled'' means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of severely disabled individuals who are not blind; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(7) QUALIFIED NONPROFIT AGENCY FOR THE BLIND.—The term ''qualified nonprofit agency for the blind'' means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of blind individuals; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(8) SEVERELY DISABLED INDIVIDUAL.—The term ''severely disabled individual'' means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(9) STATE.—The term ''State'' includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3833.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8501(1)	41:48b(1).	June 25, 1938, ch. 697, § 5, 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 81; Pub. L. 93–358, § 1(3), July 25, 1974, 88 Stat. 393; Pub. L. 94–273, § 3(22), Apr. 21, 1976, 90 Stat. 377.
8501(2)	41:46(a) (words in parentheses before par. (1)).	June 25, 1938, ch. 697, § 1(a) (words in parentheses before par. (1)), 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 77.
8501(3)	41:48b(5).	
8501(4)	41:48b(7).	
8501(5)	41:48b(2).	
8501(6)	41:48b(4).	
8501(7)	41:48b(3).	
8501(8)	41:48b(2).	
8501(9)	41:48b(8).	

In this chapter, the word ''disabled'' is substituted for ''handicapped'' for consistency with the name of the Committee. The word ''product'' is substituted for ''commodity'' to reflect the current usage of the items produced in the Committee's program.

In this section, the text of 41:48b(6) is omitted as unnecessary.

In paragraph (9), the words ''the Northern Mariana Islands'' are substituted for ''the Trust Territory of the Pacific Islands'' because the Trust Territory of the Pacific Islands terminated. See 48 U.S.C. note prec. 1681. However, section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. 1801 note) provided that laws in existence on the effective date of section 502 that were applicable to Guam and that were of general application to the several States would apply to the Northern Mariana Islands. The Marshall Islands, Palau, and the Federated States of Micronesia are not included because although they were part of the Trust Territory of the Pacific Islands, they are independent entities and not part of the United States.

CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES

Pub. L. 109–364, div. A, title VIII, § 856(a), (d), Oct. 17, 2006, 120 Stat. 2347, 2349, provided that:

''(a) INAPPLICABILITY OF CERTAIN LAWS.—

''(1) INAPPLICABILITY OF THE RANDOLPH-SHEPPARD ACT TO CONTRACTS AND SUBCONTRACTS FOR MILITARY DINING FACILITY SUPPORT SERVICES COVERED BY JAVITS-WAGNER-O'DAY ACT.—The Randolph-Sheppard Act (20 U.S.C. 107 et seq.) does not apply to full food services, mess attendant services, or services supporting the operation of a military dining facility that, as of the date of the enactment of this Act [Oct. 17, 2006], were services on the procurement list established under section 2 of the Javits-Wagner-O'Day Act ([former] 41 U.S.C. 47) [now 41 U.S.C. 8503].

''(2) INAPPLICABILITY OF THE JAVITS-WAGNER-O'DAY ACT TO CONTRACTS FOR THE OPERATION OF A MILITARY DINING FACILITY.—(A) The Javits-Wagner-O'Day Act ([former] 41 U.S.C. 46 et seq.) [now 41 U.S.C. 8501 et seq.] does not apply at the prime contract level to any contract entered into by the Department of Defense as of the date of the enactment of this Act with a State licensing agency under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) for the operation of a military dining facility.

''(B) The Javits-Wagner-O'Day Act [now 41 U.S.C. 8501 et seq.] shall apply to any subcontract entered into by a Department of Defense contractor for full food services, mess attendant services, and other services supporting the operation of a military dining facility.

''(3) REPEAL OF SUPERSEDED LAW.—[Repealed section 853(a), (b) of Pub. L. 108–375, 118 Stat. 2021.]

''(d) DEFINITIONS.—In this section:

''(1) The term 'State licensing agency' means any agency designated by the Secretary of Education under section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

''(2) The term 'military dining facility' means a facility owned, operated, leased, or wholly controlled by the Department of Defense and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces.''

STATEMENT OF POLICY AND REPORT CONCERNING THE OPERATION AND MANAGEMENT OF CERTAIN MILITARY FACILITIES REGARDING THE BLIND OR SEVERELY DISABLED

Pub. L. 109–163, div. A, title VIII, § 848(b), (c), Jan. 6, 2006, 119 Stat. 3395, provided that:

''(b) STATEMENT OF POLICY.—The Secretary of Defense, the Secretary of Education, and the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled shall jointly issue a statement of policy related to the implementation of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) and the Javits-Wagner-O'Day Act ([former] 41 U.S.C. 48 [46 et seq.]) [now 41 U.S.C. 8501 et seq.] within the Department of Defense and the Department of Education. The joint statement of policy shall specifically address the application of those Acts to both operation and management of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces, and shall take into account and address, to the extent practicable, the positions acceptable to persons representing programs implemented under each Act.

''(c) REPORT.—Not later than April 1, 2006, the Secretary of Defense, the Secretary of Education, and the Chairman of the Committee for Purchase From People

Who Are Blind or Severely Disabled shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives a report describing the joint statement of policy issued under subsection (b), with such findings and recommendations as the Secretaries consider appropriate.''

§ 8502. Committee for Purchase From People Who Are Blind or Severely Disabled

(a) ESTABLISHMENT.—There is a Committee for Purchase From People Who Are Blind or Severely Disabled.

(b) COMPOSITION.—The Committee consists of 15 members appointed by the President as follows:

(1) One officer or employee from each of the following, nominated by the head of the department or agency:

(A) The Department of Agriculture.
(B) The Department of Defense.
(C) The Department of the Army.
(D) The Department of the Navy.
(E) The Department of the Air Force.
(F) The Department of Education.
(G) The Department of Commerce.
(H) The Department of Veterans Affairs.
(I) The Department of Justice.
(J) The Department of Labor.
(K) The General Services Administration.

(2) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of the blind.

(3) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of other severely disabled individuals.

(4) One member from individuals who are not officers or employees of the Federal Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(5) One member from individuals who are not officers or employees of the Federal Government and who represent severely disabled individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely disabled individuals.

(c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3), (4), or (5) of subsection (b) shall be appointed for terms of 5 years and may be reappointed if the member meets the qualifications prescribed by those paragraphs.

(d) CHAIRMAN.—The members of the Committee shall elect one of the members to be Chairman.

(e) VACANCY.—

(1) MANNER IN WHICH FILLED.—A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(2) UNFULFILLED TERM.—A member appointed under paragraph (2), (3), (4), or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term. The member may serve after the expiration of a term until a successor takes office.

(f) PAY AND TRAVEL EXPENSES.—

(1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as provided in paragraph (2), members of the Committee are entitled to receive the daily equivalent of the maximum annual rate of basic pay payable for level IV of the Executive Schedule for each day (including travel-time) during which they perform services for the Committee. A member is entitled to travel expenses, including a per diem allowance instead of subsistence, as provided under section 5703 of title 5.

(2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members who are officers or employees of the Federal Government may not receive additional pay because of their service on the Committee.

(g) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—Subject to rules the Committee may adopt and to chapters 33 and 51 and subchapter III of chapter 53 of title 5, the Chairman may appoint and fix the pay of personnel the Committee determines are necessary to assist it in carrying out this chapter.

(2) PERSONNEL FROM OTHER ENTITIES.—On request of the Committee, the head of an entity of the Federal Government may detail, on a reimbursable basis, any personnel of the entity to the Committee to assist it in carrying out this chapter.

(h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure directly from an entity of the Federal Government information necessary to enable it to carry out this chapter. On request of the Chairman, the head of the entity shall furnish the information to the Committee.

(i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Committee, on a reimbursable basis, administrative support services the Committee requests.

(j) ANNUAL REPORT.—Not later than December 31 of each year, the Committee shall transmit to the President a report that includes the names of the Committee members serving in the prior fiscal year, the dates of Committee meetings in that year, a description of the activities of the Committee under this chapter in that year, and any recommendations for changes in this chapter which the Committee determines are necessary.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3835.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8502(a), (b)	41:46(a) (less words in parentheses before par. (1)).	June 25, 1938, ch. 697, § 1 (less (a) (words in parentheses before par. (1))), 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 77; Pub. L. 93–358, § 1(1), (2), July 25, 1974, 88 Stat. 392; Pub. L. 94–273, § 8(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 102–54, § 13(p), June 13, 1991, 105 Stat. 278; Pub. L. 102–569, title IX, § 911(a), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103–73, title III, § 301, Aug. 11, 1993, 107 Stat. 736.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8502(c)	41:46(d)(1), (2), (4).	
8502(d)	41:46(c).	
8502(e)(1)	41:46(b).	
8502(e)(2)	41:46(d)(3).	
8502(f)	41:46(e).	
8502(g)	41:46(f).	
8502(h)	41:46(g).	
8502(i)	41:46(h).	
8502(j)	41:46(i).	

In subsection (b)(1)(F), the words ''Department of Education'' are substituted for ''Department of Health and Human Services'' in 41:46(a)(1) to correct a mistake in the United States Code. In the amendment to the original provision by section 1 of Public Law 92–28 (85 Stat. 77), an officer or employee of the Department of Health, Education, and Welfare was one of the members appointed to the Committee for Purchase From People Who Are Blind or Severely Disabled, because the Department, through the Rehabilitation Services Administration, had the major governmental function in the field of vocational rehabilitation for the blind and other severely handicapped and administered related vocational rehabilitation programs for individuals with disabilities. See House Report 92–228. Under section 301(a)(4)(A) and (C) and (b)(3) of the Department of Education Organization Act (20:3441(a)(4)(A) and (C) and (b)(3)), the functions and offices of the Department and the functions of the Secretary of Health, Education, and Welfare and the Commissioner of Rehabilitation Services were transferred to the Department or Secretary of Education. Section 509 of the Act (20:3508) redesignated the Department and Secretary of Health, Education, and Welfare as the Department and Secretary of Health and Human Services, respectively, and provided that references to the Department and Secretary of Health, Education, and Welfare were deemed to be references to the Department or Secretary of Health and Human Services except to the extent a reference was to a function of the Department or Secretary of Education. The reference in 41:46(a)(1) was changed to ''Department of Health and Human Services'' but should have been changed to ''Department of Education''. Furthermore, the regulations of the Committee include the Department of Education in the list of members of the Committee. See 41 CFR 51–2.1.

In subsection (c), the text of 41:46(d)(2) and (4) is omitted as obsolete.

In subsection (f)(1), the reference to section 5376 of title 5 is substituted for the reference to grade GS–18 of the General Schedule because of section 529 [title I, § 101(c)(1)] of the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101–509, 104 Stat. 1442, 5 U.S.C. 5376 note). The word ''actual'' is omitted as unnecessary. The words ''A member is entitled to travel expenses, including a per diem allowance instead of subsistence, as provided under section 5703 of title 5'' are substituted for 41:46(e)(3) to eliminate unnecessary words. The reference to section 5703 of title 5 is substituted for the reference to section 5703(b) of title 5 because of the amendment to section 5703 by section 4 of the Travel Expense Amendments Act of 1975 (Public Law 94–22, 89 Stat. 85).

In subsection (g), the words ''its duties and powers'' are omitted as surplus.

In subsection (g)(1), the reference to chapter 33 of title 5 is substituted for ''the provisions of title 5 governing appointments in the competitive service'' for clarity and for consistency with other titles of the United States Code. The words ''relating to classification and General Schedule pay rates'' are omitted as unnecessary.

In subsection (j), the words ''and to the Congress'' are omitted pursuant to section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note). See, also, page 199 of House Document No. 103–7.

SENATE REVISION AMENDMENT

In subsec. (f)(1), ''for level IV of the Executive Schedule'' substituted for ''under section 5376 of title 5'' by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18683 (2010).

§ 8503. Duties and powers of the Committee

(a) PROCUREMENT LIST.—

(1) MAINTENANCE OF LIST.—The Committee shall maintain and publish in the Federal Register a procurement list. The list shall include the following products and services determined by the Committee to be suitable for the Federal Government to procure pursuant to this chapter:

(A) Products produced by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled.

(B) The services those agencies provide.

(2) CHANGES TO LIST.—The Committee may, by rule made in accordance with the requirements of section 553(b) to (e) of title 5, add to and remove from the procurement list products so produced and services so provided.

(b) FAIR MARKET PRICE.—The Committee shall determine the fair market price of products and services contained on the procurement list that are offered for sale to the Federal Government by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled. The Committee from time to time shall revise its price determinations with respect to those products and services in accordance with changing market conditions.

(c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for products and services on the procurement list among qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled.

(d) REGULATIONS.—The Committee—

(1) may prescribe regulations regarding specifications for products and services on the procurement list, the time of their delivery, and other matters as necessary to carry out this chapter; and

(2) shall prescribe regulations providing that when the Federal Government purchases products produced and offered for sale by qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled, priority shall be given to products produced and offered for sale by qualified nonprofit agencies for the blind.

(e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall make a continuing study and evaluation of its activities under this chapter to ensure effective and efficient administration of this chapter. The Committee on its own or in cooperation with other public or nonprofit private agencies may study—

(1) problems related to the employment of the blind and other severely disabled individuals; and

(2) the development and adaptation of production methods that would enable a greater

utilization of the blind and other severely disabled individuals.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3836.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8503(a)	41:47(a).	June 25, 1938, ch. 697, § 2, 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 79.
8503(b)	41:47(b).	
8503(c)	41:47(c).	
8503(d)	41:47(d).	
8503(e)	41:47(e).	

In subsection (a), the text of 41:47(a)(1) (last sentence) is omitted as obsolete. The words ''procurement list'' are substituted for ''(hereafter in sections 46 to 48c of this title referred to as the 'procurement list')'' to eliminate unnecessary words.

In subsection (d)(2), the text of 41:47(d)(2)(B) is omitted as obsolete.

§ 8504. Procurement requirements for the Federal Government

(a) IN GENERAL.—An entity of the Federal Government intending to procure a product or service on the procurement list referred to in section 8503 of this title shall procure the product or service from a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled in accordance with regulations of the Committee and at the price the Committee establishes if the product or service is available within the period required by the entity.

(b) EXCEPTION.—This section does not apply to the procurement of a product that is available from an industry established under chapter 307 of title 18 and that is required under section 4124 of title 18 to be procured from that industry.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3837.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8504	41:48.	June 25, 1938, ch. 697, § 3, 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 80.

In subsection (a), the words ''referred to in section 8503 of this title'' are added for clarity because of the restatement of 41:47(a) in section 8503(a) of the revised title.

In subsection (b), the words ''for procurement'' are omitted as unnecessary.

§ 8505. Audit

For the purpose of audit and examination, the Comptroller General shall have access to the books, documents, papers, and other records of—

(1) the Committee and of each central nonprofit agency the Committee designates under section 8503(c) of this title; and

(2) qualified nonprofit agencies for the blind and qualified nonprofit agencies for other severely disabled that have sold products or services under this chapter to the extent those books, documents, papers, and other records relate to the activities of the agency in a fiscal year in which a sale was made under this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8505	41:48a.	June 25, 1938, ch. 697, § 4, 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 81.

In this section, before paragraph (1), the words ''or any of his duly authorized representatives'' are omitted because of 31:711(2). In paragraph (1), the words ''central nonprofit'' are added for clarity.

§ 8506. Authorization of appropriations

Necessary amounts may be appropriated to the Committee to carry out this chapter.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8506	41:48c.	June 25, 1938, ch. 697, § 6, 52 Stat. 1196; Pub. L. 92–28, § 1, June 23, 1971, 85 Stat. 82; Pub. L. 93–76, July 30, 1973, 87 Stat. 176; Pub. L. 93–358, § 1(4), July 25, 1974, 88 Stat. 393.

The reference to the fiscal year ending June 30, 1974 is omitted as obsolete.

CHAPTER 87—KICKBACKS

Sec.
8701. Definitions.
8702. Prohibited conduct.
8703. Contractor responsibilities.
8704. Inspection authority.
8705. Administrative offsets.
8706. Civil actions.
8707. Criminal penalties.

§ 8701. Definitions

In this chapter:

(1) CONTRACTING AGENCY.—The term ''contracting agency'', when used with respect to a prime contractor, means a department, agency, or establishment of the Federal Government that enters into a prime contract with a prime contractor.

(2) KICKBACK.—The term ''kickback'' means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.

(3) PERSON.—The term ''person'' means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(4) PRIME CONTRACT.—The term ''prime contract'' means a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.

(5) PRIME CONTRACTOR.—The term ''prime contractor'' means a person that has entered into a prime contract with the Federal Government.

(6) PRIME CONTRACTOR EMPLOYEE.—The term ''prime contractor employee'' means an officer, partner, employee, or agent of a prime contractor.

(7) SUBCONTRACT.—The term ''subcontract'' means a contract or contractual action entered into by a prime contractor or subcontractor to obtain supplies, materials, equipment, or services of any kind under a prime contract.

(8) SUBCONTRACTOR.—The term ''subcontractor''—

(A) means a person, other than the prime contractor, that offers to furnish or furnishes supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with the prime contract; and

(B) includes a person that offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(9) SUBCONTRACTOR EMPLOYEE.—The term ''subcontractor employee'' means an officer, partner, employee, or agent of a subcontractor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8701	41:52.	Mar. 8, 1946, ch. 80, § 2, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3523.

In this section, the text of 41:52(3) is omitted because of the definition of ''person'' in 1:1.

In paragraph (2), the words ''directly or indirectly'' are omitted as unnecessary.

SENATE REVISION AMENDMENT

Senate amendment 4726 (111th Cong.) added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively. See 156 Cong. Rec. 18683 (2010).

§ 8702. Prohibited conduct

A person may not—

(1) provide, attempt to provide, or offer to provide a kickback;

(2) solicit, accept, or attempt to accept a kickback; or

(3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price—

(A) a subcontractor charges a prime contractor or a higher tier subcontractor; or

(B) a prime contractor charges the Federal Government.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8702	41:53.	Mar. 8, 1946, ch. 80, § 3, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.

In paragraph (3), before subparagraph (A), the words ''directly or indirectly'' are omitted as unnecessary.

§ 8703. Contractor responsibilities

(a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include in each prime contract awarded by the agency a requirement that the prime contractor shall—

(1) have in place and follow reasonable procedures designed to prevent and detect violations of section 8702 of this title in its own operations and direct business relationships; and

(2) cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime contractor shall cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—A prime contractor or subcontractor that has reasonable grounds to believe that a violation of section 8702 of this title may have occurred shall promptly report the possible violation in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or contractual action to suspend or debar a person who is eligible to enter into contracts with the Federal Government, evidence that the person has supplied information to the Federal Government pursuant to paragraph (1) is favorable evidence of the person's responsibility for the purposes of Federal procurement laws and regulations.

(d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply to a prime contract—

(1) that is not greater than $100,000; or

(2) for the acquisition of commercial items (as defined in section 103 of this title).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8703(a)	41:57(a), (b).	Mar. 8, 1946, ch. 80, § 7, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103–355, title IV, § 4104(a), title VIII, § 8301(c)(1), Oct. 13, 1994, 108 Stat. 3341, 3397; Pub. L. 104–106, div. D, title XLIII, § 4321(g), Feb. 10, 1996, 110 Stat. 675.
8703(b)	41:57(e).	
8703(c)	41:57(c).	
8703(d)	41:57(d).	

In subsection (c)(1), the words ''Attorney General'' are substituted for ''Department of Justice'' because of 28:503.

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the Comptroller General and the inspector general of the contracting agency, or a representative of the con-

tracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

(b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of commercial items (as defined in section 103 of this title).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8704	41:58.	Mar. 8, 1946, ch. 80, § 8, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103–355, title VIII, § 8301(c)(2), Oct. 13, 1994, 108 Stat. 3397.

In subsection (a), the words ''Comptroller General'' are substituted for ''General Accounting Office'' because of 31:702.

§ 8705. Administrative offsets

(a) DEFINITION.—In this section, the term ''contracting officer'' has the meaning given that term in chapter 71 of this title.

(b) OFFSET AUTHORITY.—A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 8702 of this title against amounts the Federal Government owes the prime contractor under the prime contract to which the kickback relates.

(c) DUTIES OF PRIME CONTRACTOR.—

(1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from amounts owed to a subcontractor under a subcontract of the prime contract the amount of a kickback which was or may be offset against the prime contractor under subsection (b). The contracting officer may order that amounts withheld—

(A) be paid over to the contracting agency; or

(B) be retained by the prime contractor if the Federal Government has already offset the amount against the prime contractor.

(2) NOTICE.—The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (1)(B).

(d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.—An offset under subsection (b) or a direction or order of a contracting officer under subsection (c) is a claim by the Federal Government for the purposes of chapter 71 of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3840.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8705(a)	41:56(d).	Mar. 8, 1946, ch. 80, § 6, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.
8705(b)	41:56(a).	
8705(c)	41:56(b).	
8705(d)	41:56(c).	

§ 8706. Civil actions

(a) AMOUNT.—The Federal Government in a civil action may recover from a person—

(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—

(A) twice the amount of each kickback involved in the violation; and

(B) not more than $10,000 for each occurrence of prohibited conduct; and

(2) whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

(b) STATUTE OF LIMITATIONS.—A civil action under this section must be brought within 6 years after the later of the date on which—

(1) the prohibited conduct establishing the cause of action occurred; or

(2) the Federal Government first knew or should reasonably have known that the prohibited conduct had occurred.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3840.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8706	41:55.	Mar. 8, 1946, ch. 80, § 5, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.

§ 8707. Criminal penalties

A person that knowingly and willfully engages in conduct prohibited by section 8702 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8707	41:54.	Mar. 8, 1946, ch. 80, § 4, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.