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.

## 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 re-

stated 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. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 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.

### § 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 Gov-

ernment 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)). | |
| 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 [contracts 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. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| | | 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.
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6508. Authority to make exceptions.
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6510. Manufacturers and regular dealers.
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### § 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).<br>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, Telegraphs, Telephones, and Radiotelegraphs. 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 1331 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, Telegraphs, Telephones, and Radiotelegraphs. 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 specify-

ing 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. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 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.
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### CHAPTER 71—CONTRACT DISPUTES

Sec.
7101. Definitions.
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