

tracting officers, and others in authority to promote competition in procurement programs; and

(6) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) **RESPONSIBILITIES.**—The advocate for competition for each procuring activity is responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to acquisition, including unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3709.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1705	41:418.	Pub. L. 93-400, § 20, as added Pub. L. 98-369, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197; Pub. L. 103-355, title VIII, § 8303(a), Oct. 13, 1994, 108 Stat. 3398.

§ 1706. Personnel evaluation

The head of each executive agency subject to division C shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98-577, 98 Stat. 3066), that the performance appraisal system applicable to those employees affords appropriate recognition to, among other factors, efforts to—

(1) increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;

(2) further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98-577, 98 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public Law 98-525, title XII, 98 Stat. 2588); and

(3) further other objectives and purposes of the Federal acquisition system authorized by law.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3710.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1706	41:414a.	Pub. L. 98-577, title V, § 502, Oct. 30, 1984, 98 Stat. 3085.

REFERENCES IN TEXT

The Small Business and Federal Procurement Competition Enhancement Act of 1984, referred to in text, is Pub. L. 98-577, Oct. 30, 1984, 98 Stat. 3066. For complete classification of this Act to the Code, see Short Title of 1984 Act note set out under section 101 of this title and Tables.

The Defense Procurement Reform Act of 1984, referred to in par. (2), is Pub. L. 98-525, title XII, Oct. 19, 1984, 98 Stat. 2588. For complete classification of this Act to the Code, see Short Title of 1984 Amendment

note set out under section 2302 of Title 10, Armed Forces, and Tables.

§ 1707. Publication of proposed regulations

(a) **COVERED POLICIES, REGULATIONS, PROCEDURES, AND FORMS.**—

(1) **REQUIRED COMMENT PERIOD.**—Except as provided in subsection (d), a procurement policy, regulation, procedure, or form (including an amendment or modification thereto) may not take effect until 60 days after it is published for public comment in the Federal Register pursuant to subsection (b) if it—

(A) relates to the expenditure of appropriated funds; and

(B)(i) has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form; or

(ii) has a significant cost or administrative impact on contractors or offerors.

(2) **EXCEPTION.**—A policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but the effective date may not be less than 30 days after the publication date.

(b) **PUBLICATION IN FEDERAL REGISTER AND COMMENT PERIOD.**—Subject to subsection (c), the head of the agency shall have published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on the proposal. The length of the comment period may not be less than 30 days.

(c) **CONTENTS OF NOTICE.**—Notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and the name and address of the officer or employee of the Federal Government designated to receive the comments.

(d) **WAIVER.**—The requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable.

(e) **EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.**—

(1) **TEMPORARY BASIS.**—A procurement policy, regulation, procedure, or form for which the requirements of subsections (a) and (b) are waived under subsection (d) is effective on a temporary basis if—

(A) a notice of the policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

(2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under subsection (d) may issue the final procurement policy, regulation, procedure, or form.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3710.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1707	41:418b.	Pub. L. 93-400, § 22, as added Pub. L. 98-577, title III, § 302(a), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 103-355, title V, § 5092, Oct. 13, 1994, 108 Stat. 3362, as amended Pub. L. 104-106, title XLIII, § 4321(a)(9), Feb. 10, 1996, 110 Stat. 671.

In subsection (a)(2), the words “Notwithstanding the preceding sentence” are omitted as unnecessary.

§ 1708. Procurement notice

(a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—

(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);

(2) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(B) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement; and

(3) an executive agency awarding a contract for property or services for a price exceeding \$25,000, or placing an order exceeding \$25,000 under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) EXEMPTIONS.—

(1) IN GENERAL.—A notice is not required under subsection (a) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency’s needs and disclosure would compromise national security;

(C) the proposed procurement would result from acceptance of—

(i) an unsolicited proposal that demonstrates a unique and innovative research concept and publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act (15 U.S.C. 638);

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) CERTAIN PROCUREMENTS.—The requirements of subsection (a)(2) do not apply to a procurement—

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10; or

(B) for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.—Paragraph (1)(A) shall be implemented in a manner consistent with applicable international agreements.

(c) CONTENTS OF NOTICE.—Each notice of solicitation required by paragraph (1) or (2) of subsection (a) shall include—

(1) an accurate description of the property or services to be contracted for, which description—

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item’s form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A)(i) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and