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Editorial Notes

AMENDMENTS

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

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Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §836(a)(3), Aug. 13, 2018, 132 Stat. 1860, substituted “Commercial product” for “Commercial item” in item 103 and added item 103a.

SUBCHAPTER I—SUBTITLE DEFINITIONS

§ 101. Administrator

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
101	no source.	

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2021 AMENDMENT

Pub. L. 117-28, §1, July 26, 2021, 135 Stat. 304, provided that: “This Act [amending provisions set out as a note under section 3309 of this title] may be cited as the ‘Construction Consensus Procurement Improvement Act of 2021’.”

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116-260, div. U, title IV, §401, Dec. 27, 2020, 134 Stat. 2292, provided that: “This title [enacting provisions set out as a note under section 3309 of this title] may be cited as the ‘Construction Consensus Procurement Improvement Act of 2020’.”

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115-390, §1(a), Dec. 21, 2018, 132 Stat. 5173, provided that: “This Act [enacting subchapter III of chapter 13 of this title and section 4713 of this title, amending sections 3553 and 3554 of Title 44, Public Printing and Documents, and section 3348 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 1321 and 4713 of this title, section 663 of Title 6, Domestic Security, and section 3553 of Title 44] may be cited as the ‘Strengthening and Enhancing Cyber-capabilities by Utilizing Risk Exposure Technology Act’ or the ‘SECURE Technology Act’.”

Pub. L. 115-390, title II, §201, Dec. 21, 2018, 132 Stat. 5178, provided that: “This title [enacting subchapter III of chapter 13 of this title and section 4713 of this title, amending sections 3553 and 3554 of Title 44, Public Printing and Documents, and enacting provisions set out as notes under sections 1321 and 4713 of this title and section 3553 of Title 44] may be cited as the ‘Federal Acquisition Supply Chain Security Act of 2018’.”

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114-260, §1, Dec. 14, 2016, 130 Stat. 1361, provided that: “This Act [amending section 4106 of this title] may be cited as the ‘GAO Civilian Task and Delivery Order Protest Authority Act of 2016’.”

SHORT TITLE OF 2012 AMENDMENT

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

SHORT TITLE OF 2008 ACT

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

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

SHORT TITLE OF 2003 ACT

Pub. L. 108-136, div. A, title XIV, §1401, Nov. 24, 2003, 117 Stat. 1663, provided that: “This title [see Tables for

classification] may be cited as the ‘Services Acquisition Reform Act of 2003’.”

SHORT TITLE OF 1996 ACT

Pub. L. 104-106, div. D, § 4001, Feb. 10, 1996, 110 Stat. 642, as amended by Pub. L. 104-208, div. A, title I, § 101(f) [title VIII, § 808(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-393, provided that: “This division [div. D (§§ 4001-4402) of Pub. L. 104-106, see Tables for classification] and division E (§§ 5001-5703 of Pub. L. 104-106, repealed and reenacted, generally, as subtitle III (§1101 et seq.) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, see Tables for complete classification] may be cited as the ‘Clinger-Cohen Act of 1996’.”

SHORT TITLE OF 1994 ACT

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

SHORT TITLE OF 1988 ACT

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

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

SHORT TITLE OF 1986 ACT

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

SHORT TITLE OF 1984 ACT

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

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

SHORT TITLE OF 1983 ACT

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

SHORT TITLE OF 1979 ACT

Pub. L. 96-83, §1(a), Oct. 10, 1979, 93 Stat. 648, provided that: “This Act [see Tables for classification] may be cited as the ‘Office of Federal Procurement Policy Act Amendments of 1979’.”

SHORT TITLE OF 1974 ACT

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

SHORT TITLE OF 1949 ACT

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

[Pub. L. 107-217, § 6(b), which had repealed section 1(a) of act June 30, 1949, set out above, was itself repealed effective Aug. 21, 2002, by Pub. L. 108-178, § 2(b)(1), insofar as it related to section 1(a) of act June 30, 1949, and

Pub. L. 108-178, § 2(b)(1), further provided that section 1(a) of act June 30, 1949, was revived to read as if Pub. L. 107-217, § 6(b), had not been enacted.]

SHORT TITLE OF 1936 ACT

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

SHORT TITLE OF 1933 ACT

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

§ 102. Commercial component

In this subtitle, the term “commercial component” means a component that is a commercial product.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3678; Pub. L. 115-232, div. A, title VIII, § 836(a)(2)(A), Aug. 13, 2018, 132 Stat. 1860.)

HISTORICAL AND REVISION NOTES

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

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232 substituted “commercial product” for “commercial item”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 103. Commercial product

In this subtitle, the term “commercial product” means any of the following:

(1) A product, other than real property, that—

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

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

(2) A product that—

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

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

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

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

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

(4) Any combination of products meeting the requirements of paragraph (1), (2), or (3) that are of a type customarily combined and sold in combination to the general public.

(5) A product, or combination of products, referred to in paragraphs (1) through (4), even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

(6) A nondevelopmental item if the procuring agency determines, in accordance with conditions in the Federal Acquisition Regulation, that—

(A) the product was developed exclusively at private expense; and

(B) has been sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

(Added Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1859.)

Editorial Notes

PRIOR PROVISIONS

A prior section 103, Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3679; Pub. L. 115-91, div. A, title VIII, § 847(a), Dec. 12, 2017, 131 Stat. 1487, defined term “commercial item”, prior to repeal by Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1859, effective Jan. 1, 2020. See Effective Date note below.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective, and repeal of former section 103 effective, on Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 103a. Commercial service

In this subtitle, the term “commercial service” means any of the following:

(1) Installation services, maintenance services, repair services, training services, and other services if—

(A) those services are procured for support of a commercial product, regardless of whether the services are provided by the same source or at the same time as the commercial product; and

(B) the source of the services provides similar services contemporaneously to the general public under terms and conditions

similar to those offered to the Federal Government;

(2) Services of a type offered and sold competitively, in substantial quantities, in the commercial marketplace—

(A) based on established catalog or market prices;

(B) for specific tasks performed or specific outcomes to be achieved; and

(C) under standard commercial terms and conditions.

(3) A service described in paragraph (1) or (2), even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

(Added Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1860.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 104. Commercially available off-the-shelf item

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

(1) means an item that—

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

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

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

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

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3679; Pub. L. 115-232, div. A, title VIII, § 836(a)(2)(B), Aug. 13, 2018, 132 Stat. 1860; Pub. L. 116-283, div. A, title X, § 1081(d)(4)(A), Jan. 1, 2021, 134 Stat. 3874.)

HISTORICAL AND REVISION NOTES

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

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

Editorial Notes

AMENDMENTS

2021—Par. (1)(A). Pub. L. 116-283, § 1081(d)(4)(A), made technical correction to directory language of Pub. L. 115-232, § 836(a)(2)(B). See 2018 Amendment note below.

2018—Par. (1)(A). Pub. L. 115-232, as amended by Pub. L. 116-283, § 1081(d)(4)(A), substituted “commercial product” for “commercial item”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2021 AMENDMENT**

Pub. L. 116-283, div. A, title X, §1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(4)(A) to section 836(a)(2)(B) of Pub. L. 115-232, which amended this section, is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 105. Component

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

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

HISTORICAL AND REVISION NOTES

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

§ 106. Federal Acquisition Regulation

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

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

HISTORICAL AND REVISION NOTES

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

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

§ 107. Full and open competition

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

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

HISTORICAL AND REVISION NOTES

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

§ 108. Item and item of supply

In this subtitle, the terms “item” and “item of supply”—

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

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
108	41:259(c)(8), (9).	June 30, 1949, ch. 288, title III, §309(c)(8), (9), as added Pub. L. 98-369, title VII, §2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98-577, title V, §504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103-355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299.
	41:403(10) (“item”, “item of supply”).	Pub. L. 93-400, §4(10) (“item”, “item of supply”), formerly §4(11), as added Pub. L. 98-577, title I, §102(3), Oct. 30, 1984, 98 Stat. 3067; redesignated as §4(10), Pub. L. 100-679, §3(c), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 103-355, title VIII, §8001(b)(1), (2), (4), Oct. 13, 1994, 108 Stat. 3386.

§ 109. Major system

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

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

(1) the Department of Defense is responsible for the system and the total expenditures for research, development, testing, and evaluation for the system are estimated to exceed \$75,000,000 (based on fiscal year 1980 constant

dollars) or the eventual total expenditure for procurement exceeds \$300,000,000 (based on fiscal year 1980 constant dollars);

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

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

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

HISTORICAL AND REVISION NOTES

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

§ 110. Nondevelopmental item

In this subtitle, the term “nondevelopmental item” means—

(1) a commercial product;

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

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

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

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3680; Pub. L. 115-232, div. A, title VIII, § 836(a)(2)(C), Aug. 13, 2018, 132 Stat. 1860.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
110	41:259(c)(12).	June 30, 1949, ch. 288, title III, § 309(c)(12), as added Pub. L. 98-369, title VII, § 2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98-577, title V, § 504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103-355, title I, § 1551, Oct. 13, 1994, 108 Stat. 3299.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
	41:264a (“non-developmental item”).	June 30, 1949, ch. 288, title III, § 314A (“nondevelopmental item”), as added Pub. L. 103-355, title VIII, § 8202, Oct. 13, 1994, 108 Stat. 3394.
	41:403(13).	Pub. L. 93-400, § 4(13), as added Pub. L. 103-355, title VIII, § 8001(a), Oct. 13, 1994, 108 Stat. 3385.

Editorial Notes

AMENDMENTS

2018—Par. (1). Pub. L. 115-232 substituted “commercial product” for “commercial item”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 111. Procurement

In this subtitle, the term “procurement” includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and close-out.

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

HISTORICAL AND REVISION NOTES

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

§ 112. Procurement system

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
112	41:259(c)(2).	June 30, 1949, ch. 288, title III, § 309(c)(2), as added Pub. L. 98-369, title VII, § 2711(a)(3), July 18, 1984, 98 Stat. 1180; Pub. L. 98-577, title V, § 504(a)(4), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 103-355, title I, § 1551, Oct. 13, 1994, 108 Stat. 3299.

HISTORICAL AND REVISION NOTES—CONTINUED

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

§ 113. Responsible source

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

- (1) has adequate financial resources to perform the contract or the ability to obtain those resources;
- (2) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;
- (3) has a satisfactory performance record;
- (4) has a satisfactory record of integrity and business ethics;
- (5) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain the organization, experience, controls, and skills;
- (6) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain the equipment and facilities; and
- (7) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

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

HISTORICAL AND REVISION NOTES

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

§ 114. Standards

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

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

HISTORICAL AND REVISION NOTES

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

§ 115. Supplies

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

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

HISTORICAL AND REVISION NOTES

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

§ 116. Technical data

In this subtitle, the term “technical data”—

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

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

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

HISTORICAL AND REVISION NOTES

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

HISTORICAL AND REVISION NOTES—CONTINUED

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

SUBCHAPTER II—DIVISION B DEFINITIONS

§ 131. Acquisition

In division B, the term “acquisition”—

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

(2) includes—

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

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

(C) solicitation and selection of sources;

(D) award of contracts;

(E) contract performance;

(F) contract financing;

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

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

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

HISTORICAL AND REVISION NOTES

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

§ 132. Competitive procedures

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

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

HISTORICAL AND REVISION NOTES

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

§ 133. Executive agency

In division B, the term “executive agency” means—

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

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

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

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
133	41:403(1).	Pub. L. 93-400, §4(1), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-63, §3, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §4, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 103-355, title VIII, §8001(b)(1)–(3), Oct. 13, 1994, 108 Stat. 3386.

§ 134. Simplified acquisition threshold

In division B, the term “simplified acquisition threshold” means \$250,000.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3682; Pub. L. 115-91, div. A, title VIII, §805, Dec. 12, 2017, 131 Stat. 1456.)

HISTORICAL AND REVISION NOTES

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

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-91 substituted “\$250,000” for “\$100,000”.

SUBCHAPTER III—DIVISION C DEFINITIONS

Statutory Notes and Related Subsidiaries

DEFINITIONS

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

§ 151. Agency head

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

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

HISTORICAL AND REVISION NOTES

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

§ 152. Competitive procedures

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

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

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

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

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

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

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
153(1)	41:259(d)(1).	June 30, 1949, ch. 288, title III, §309(d)(1), as added Pub. L. 103–355, title I, §1551, Oct. 13, 1994, 108 Stat. 3299; Pub. L. 104–201, title VIII, §807(b)(1), (2), Sept. 23, 1996, 110 Stat. 2606.
153(2)	41:259(d)(2).	June 30, 1949, ch. 288, title III, §309(d)(2), as added Pub. L. 104–201, title VIII, §807(b)(3), Sept. 23, 1996, 110 Stat. 2606.

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

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

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

SUBCHAPTER I—GENERAL

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

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

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

AMENDMENT OF ANALYSIS

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

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

Editorial Notes

AMENDMENTS

2013—Pub. L. 113–66, div. A, title VIII, §811(c)(2), Dec. 26, 2013, 127 Stat. 806, and Pub. L. 113–67, div. A, title