

Pub. L. 100-202, § 101(h) [title V, § 502], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.

Pub. L. 99-500, § 101(i) [H.R. 5233, title V, § 502], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, § 101(i) [H.R. 5233, title V, § 502], Oct. 30, 1986, 100 Stat. 3341-287.

Pub. L. 99-178, title V, § 502, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98-619, title V, § 502, Nov. 8, 1984, 98 Stat. 3332.

Pub. L. 98-139, title V, § 502, Oct. 31, 1983, 97 Stat. 899.

Pub. L. 97-377, title I, § 101(e)(1) [title V, § 502], Dec. 21, 1982, 96 Stat. 1878, 1904.

§ 1102. Administrator

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

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

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

HISTORICAL AND REVISION NOTES

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

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

§ 1121. General authority

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

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

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

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

(A) property other than real property in being;

(B) services, including research and development; and

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

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

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

(d) **WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO ACT.**—In any instance in

which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures, and forms in a timely manner, including regulations, procedures, and forms necessary to implement prescribed policy the Administrator initiates under subsection (b), the Administrator, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this division, shall prescribe Government-wide regulations, procedures, and forms which executive agencies shall follow in procuring items listed in subsection (c)(1).

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

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

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

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

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1121(a)–(c) (1).	41:405(a).	Pub. L. 93-400, §6(a), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1327; Pub. L. 100-679, §3(a)(1), Nov. 17, 1988, 102 Stat. 4055.
1121(c)(2)	41:405a (1st sentence).	Pub. L. 95-507, title II, § 222 (1st sentence), Oct. 24, 1978, 92 Stat. 1771.
1121(c)(3)	41:408.	Pub. L. 93-400, §9, Aug. 30, 1974, 88 Stat. 799.
1121(d)	41:405(b).	Pub. L. 93-400, §6(b), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1327; Pub. L. 100-679, §3(a)(2), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 104-106, title XLIII, §4322(a)(1), Feb. 10, 1996, 110 Stat. 677.
1121(e)	41:405(f).	Pub. L. 93-400, §6(f), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1327; Pub. L. 100-679, §3(a)(4), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104-201, title X, §1074(f)(1), Sept. 23, 1996, 110 Stat. 2661.
1121(f)	41:405(c).	Pub. L. 93-400, §6(c), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1327.

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

Statutory Notes and Related Subsidiaries

SUPERSEDITION OF INCONSISTENT STATUTORY PROVISIONS

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

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

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

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

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

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

PROFIT METHODOLOGY STUDY

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

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

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

§ 1122. Functions

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

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

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

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

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

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

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

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

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

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

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

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

(11) developing policies, in consultation with the Administrator of the Small Business Administration, that ensure that small businesses, qualified HUBZone small business concerns (as defined in section 31(b) of the Small Business Act), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women are provided with the maximum practicable opportunities to participate in procurements that are conducted for amounts below the simplified acquisition threshold;

(12) developing policies that will promote achievement of goals for participation by small businesses, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns (as defined in section 31(b) of the Small Business Act), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women; and

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

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

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

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

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

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

(c) ASSIGNMENT, DELEGATION, OR TRANSFER.—

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

(2) BY ADMINISTRATOR.—

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

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

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3685; Pub. L. 112–81, div. A, title VIII, § 864(b)(3), Dec. 31, 2011, 125 Stat. 1524; Pub. L. 115–91, div. A, title XVII, § 1701(a)(4)(F)(i), Dec. 12, 2017, 131 Stat. 1796.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1122(a)	41:405(d).	Pub. L. 93–400, § 6(d), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, § 4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, § 5, Dec. 1, 1983, 97 Stat. 1327; Pub. L. 100–679, § 3(a)(3), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 103–355, title V, § 5091, title VII, § 7108, Oct. 13, 1994, 108 Stat. 3361, 3378; Pub. L. 104–106, title XLIII, §§ 4307(b), 4321(h)(1), (2), Feb. 10, 1996, 110 Stat. 668, 675; Pub. L. 105–85, title X, § 1073(g)(2)(B), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–135, title VI, § 604(f)(1), Dec. 2, 1997, 111 Stat. 2634.
1122(b)	41:405(e).	Pub. L. 93–400, § 6(e), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, § 4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, § 5, Dec. 1, 1983, 97 Stat. 1328; Pub. L. 98–369, title VII, § 2732(b)(1), July 18, 1984, 98 Stat. 1199.
1122(c)(1)	41:405(g).	Pub. L. 93–400, § 6(g), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96–83, § 4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98–191, § 5, Dec. 1, 1983, 97 Stat. 1328.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1122(c)(2)(A)	41:411(b).	Pub. L. 93–400, § 12, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96–83, § 8, Oct. 10, 1979, 93 Stat. 652; Pub. L. 98–191, § 8(c), Dec. 1, 1983, 97 Stat. 1331.
1122(c)(2)(B)	41:411(a).	

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

Editorial Notes

REFERENCES IN TEXT

Section 31(b) of the Small Business Act, referred to in subsec. (a)(11), (12), is classified to section 657a(b) of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (a)(11), (12). Pub. L. 115–91, § 1701(a)(4)(F)(i), substituted “section 31(b) of the Small Business Act” for “section 3(p) of the Small Business Act (15 U.S.C. 632(p))”.

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective Jan. 1, 2020, see section 1701(j) of Pub. L. 115–91, set out as a note under section 657a of Title 15, Commerce and Trade.

REVISION TO THE FEDERAL PROCUREMENT DATA SYSTEM

Pub. L. 116–92, div. A, title VIII, § 806(b), Dec. 20, 2019, 133 Stat. 1485, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Administrator of General Services, in coordination with the Administrator for Federal Procurement Policy, shall direct appropriate revisions to the Federal procurement data system established pursuant to section 1122(a)(4) of title 41, United States Code (or any successor system), to facilitate the collection of complete, timely, and reliable data on the source selection processes used by Federal agencies for the contract actions being reported in the system. The Administrator of General Services shall ensure that data are collected—

“(1) at a minimum, on the usage of the lowest price technically acceptable contracting methods and best value contracting methods process; and

“(2) on all applicable contracting actions, including task orders or delivery orders issued under indefinite delivery-indefinite quantity contracts.”

PROCUREMENT ADMINISTRATIVE LEAD TIME DEFINITION AND PLAN

Pub. L. 115–232, div. A, title VIII, § 878, Aug. 13, 2018, 132 Stat. 1908, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Administrator for Federal Procurement Policy shall develop, make available for public comment, and finalize—

“(1) a definition of the term ‘Procurement administrative lead time’ or ‘PALT’, to be applied Government-wide, that describes the amount of time from the date on which a solicitation for a contract or task order is issued to the date of an initial award of the contract or task order; and

“(2) a plan for measuring and publicly reporting data on PALT for Federal Government contracts and

task orders in amounts greater than the simplified acquisition threshold.

“(b) REQUIREMENT FOR DEFINITION.—Unless the Administrator determines otherwise, the amount of time in the definition of PALT developed under subsection (a) shall—

“(1) begin on the date on which an initial solicitation is issued by a Federal department or agency for a contract or task order; and

“(2) end on the date of the award of the contract or task order.

“(c) COORDINATION.—In developing the definition of PALT, the Administrator shall coordinate with—

“(1) the senior procurement executives of Federal agencies;

“(2) the Secretary of Defense; and

“(3) the Administrator of the General Services Administration on modifying the existing data system of the Federal Government to determine the date on which the initial solicitation is issued.

“(d) USE OF EXISTING PROCUREMENT DATA SYSTEM.—In developing the plan for measuring and publicly reporting data on PALT required by subsection (a), the Administrator shall, to the maximum extent practicable, rely on the information contained in the Federal procurement data system established pursuant to section 1122(a)(4) of title 41, United States Code, including any modifications to that system.”

PILOT PROGRAM TO INVENTORY COST AND SIZE OF SERVICE CONTRACTS

Pub. L. 110–161, div. D, title VII, § 748, Dec. 26, 2007, 121 Stat. 2035, provided that: “No later than 180 days after enactment of this Act [Dec. 26, 2007], the Office of Management and Budget shall establish a pilot program to develop and implement an inventory to track the cost and size (in contractor manpower equivalents) of service contracts, particularly with respect to contracts that have been performed poorly by a contractor because of excessive costs or inferior quality, as determined by a contracting officer within the last five years, involve inherently governmental functions, or were undertaken without competition. The pilot program shall be established in at least three Cabinet-level departments, based on varying levels of annual contracting for services, as reported by the Federal Procurement Data System’s Federal Procurement Report for fiscal year 2005, including at least one Cabinet-level department that contracts out annually for \$10,000,000,000 or more in services, at least one Cabinet-level department that contracts out annually for between \$5,000,000,000 and \$9,000,000,000 in services, and at least one Cabinet-level department that contracts out annually for under \$5,000,000,000 in services.”

REPORTING OF BUNDLED CONTRACT OPPORTUNITIES

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

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

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

RESULTS-ORIENTED ACQUISITION PROCESS

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

“(a) DEVELOPMENT OF PROCESS REQUIRED.—The Administrator for Federal Procurement Policy, in con-

sultation with the heads of appropriate Federal agencies, shall develop results-oriented acquisition process guidelines for implementation by agencies in acquisitions of property and services by the Federal agencies. The process guidelines shall include the identification of quantitative measures and standards for determining the extent to which an acquisition of items other than commercial items by a Federal agency satisfies the needs for which the items are being acquired.

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

DATA COLLECTION THROUGH FEDERAL PROCUREMENT DATA SYSTEM

Pub. L. 103–355, title X, § 10004, Oct. 13, 1994, 108 Stat. 3405, as amended by Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(iv), Aug. 13, 2018, 132 Stat. 1847, provided that:

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

“(1) Contract awards made pursuant to competitions conducted pursuant to section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, 15 U.S.C. 644 note].

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

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

“(4) Task order contracts.

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

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

§ 1123. Small business concerns

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

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

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

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

HISTORICAL AND REVISION NOTES

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

§ 1124. Tests of innovative procurement methods and procedures

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

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

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

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

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

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

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

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

(c) **REQUEST FOR WAIVER OF LAW.**—If the Administrator determines that it is necessary to waive the application of a provision of law to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and request that the Committees take the necessary action to provide that the provision of law does not apply with respect to the proposed program. The notification to Congress shall include—

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

In subsection (c), the words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Operations” on authority of section 1(a)(6) of Public Law 104-14 (2 U.S.C. note prec. 21), Rule X(1)(h) of the Rules of the House of Representatives, adopted by House Resolution No. 5 (106th Congress, January 6, 1999), and Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007). The

words “Committee on Homeland Security and Governmental Affairs” are substituted for “Committee on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

§ 1125. Recipients of Federal grants or assistance

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

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

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

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1125(a)	41:405(i)(1).	Pub. L. 93-400, § 6(i), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, § 4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, § 5, Dec. 1, 1983, 97 Stat. 1328.
1125(b)	41:405(i)(2).	

§ 1126. Policy regarding consideration of contractor past performance

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

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

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

(3) policies for ensuring that—

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

Statutory Notes and Related Subsidiaries

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

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

“(a) **STRATEGY REQUIRED.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Federal Acquisition Regulatory Council shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used by executive agencies for making source selection decisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

“(f) **DEFINITIONS.**—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

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

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

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

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

CONGRESSIONAL FINDINGS REGARDING CONSIDERATION OF PAST CONTRACT PERFORMANCE

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

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

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

§ 1127. Determining benchmark compensation amount

(a) **DEFINITIONS.**—In this section:

(1) **BENCHMARK COMPENSATION AMOUNT.**—The term “benchmark compensation amount”, for

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

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

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

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

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

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

(B) whose voting stock is publicly traded.

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

(b) **DETERMINING BENCHMARK COMPENSATION AMOUNT.**—For purposes of section 4304(a)(16) of this title and section 3744(a)(16) of title 10, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection, the Administrator shall consult with the Director of the Defense Contract Audit Agency and other officials of executive agencies as the Administrator considers appropriate.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3689; Pub. L. 117-81, div. A, title XVII, § 1702(h)(1), Dec. 27, 2021, 135 Stat. 2158.)

REPEAL OF SECTION

Pub. L. 113-67, div. A, title VII, § 702(b)(1), (c), Dec. 26, 2013, 127 Stat. 1189, repealed this section 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.

Pub. L. 113-66, div. A, title VIII, § 811(c)(1), (d), Dec. 26, 2013, 127 Stat. 806, repealed this section 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.

HISTORICAL AND REVISION NOTES

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

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 117-81 substituted “section 3744(a)(16)” for “section 2324(e)(1)(P)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 113-67 applicable only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 702(c) of Pub. L. 113-67, set out as an Effective Date of 2013 Amendment note under section 4304 of this title.

Repeal by Pub. L. 113-66 applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 811(d) of Pub. L. 113-66, set out as an Effective Date of 2013 Amendment note under section 4304 of this title.

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

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

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

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

“(1) The term ‘covered contract’ has the meaning given such term in section 2324(l) of title 10, United States Code [see 10 U.S.C. 3741], and section 306(l) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 256(f)) [see 41 U.S.C. 4301].

“(2) The terms ‘compensation’ and ‘senior executives’ have the meanings given such terms in section 2324(l) of title 10, United States Code [see 10 U.S.C. 3741 as to “compensation” and former 10 U.S.C. 2324(l)(5) as to “senior executives”], and section 306(m) of the Federal Property and Administrative Services Act of 1949 [see 41 U.S.C. 4301].”

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

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

with respect to the acquisition of architectural and engineering services to—

- (1) ensure that Federal Government employees have the expertise to determine agency requirements for those services;
- (2) establish priorities and programs, including acquisition plans;
- (3) establish professional standards;
- (4) develop scopes of work; and
- (5) award and administer contracts for those services.

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

HISTORICAL AND REVISION NOTES

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

§ 1129. Center of excellence in contracting for services

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

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

HISTORICAL AND REVISION NOTES

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

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

§ 1130. Effect of division on other law

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

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1130	41:405(h)(1).	Pub. L. 93-400, §6(h)(1), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1328; Pub. L. 104-106, title LVI, §5607(d), Feb. 10, 1996, 110 Stat. 702.

§ 1131. Annual report

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

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

HISTORICAL AND REVISION NOTES

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

CHAPTER 12—FEDERAL ACQUISITION INSTITUTE

Sec.
1201. Federal Acquisition Institute.

§ 1201. Federal Acquisition Institute

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

- (1) foster and promote the development of a professional acquisition workforce Government-wide;
- (2) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;
- (3) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;
- (4) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;
- (5) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;
- (6) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;
- (7) evaluate the effectiveness of training and career development programs for acquisition personnel;
- (8) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;
- (9) facilitate, to the extent requested by agencies, interagency intern and training programs;
- (10) collaborate with other civilian agency acquisition training programs to leverage training supporting all members of the civilian agency acquisition workforce;
- (11) assist civilian agencies with their acquisition and capital planning efforts; and
- (12) perform other career management or research functions as directed by the Administrator.

(b) BUDGET RESOURCES AND AUTHORITY.—

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

(2) ACQUISITION WORKFORCE TRAINING FUND.—Subject to the availability of funds, the Ad-