

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2105(a)	41:423(e)(1).	Pub. L. 93-400, § 27(e), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 661.
2105(b)	41:423(e)(2).	
2105(c)	41:423(e)(3).	

In subsection (a), the word “violates” is substituted for “engages in conduct constituting a violation of” to eliminate unnecessary words.

In subsection (b), the words “liable to the Federal Government for” are substituted for “subject to” for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(1), the words “has violated” are substituted for “has engaged in conduct constituting a violation of” to eliminate unnecessary words.

§ 2106. Reporting information believed to constitute evidence of offense

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3731.)

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<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2106	41:423(g).	Pub. L. 93-400, § 27(g), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 663.

§ 2107. Savings provisions

This chapter does not—

(1) restrict the disclosure of information to, or its receipt by, a person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal

agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3731.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2107	41:423(h).	Pub. L. 93-400, § 27(h), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 663.

CHAPTER 23—MISCELLANEOUS

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§ 2301. Use of electronic commerce in Federal procurement

(a) DEFINITION.—For the purposes of this section, the term “electronic commerce” means electronic techniques for accomplishing business transactions, including electronic mail or

messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfers, and electronic data interchange.

(b) **ESTABLISHMENT, MAINTENANCE, AND USE OF ELECTRONIC COMMERCE PROCEDURES AND PROCESSES.**—The head of each executive agency, after consulting with the Administrator, shall establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of the procurement system of the agency.

(c) **APPLICABLE STANDARDS.**—In conducting electronic commerce, the head of an executive agency shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

(d) **REQUIREMENTS OF SYSTEMS, TECHNOLOGIES, PROCEDURES, AND PROCESSES.**—The head of each executive agency shall ensure that systems, technologies, procedures, and processes established pursuant to this section—

(1) are implemented with uniformity throughout the agency, to the extent practicable;

(2) are implemented only after granting due consideration to the use or partial use, as appropriate, of existing electronic commerce and electronic data interchange systems and infrastructures such as the Federal acquisition computer network architecture known as FACNET;

(3) facilitate access to Federal Government procurement opportunities, including opportunities for small business concerns, socially and economically disadvantaged small business concerns, and business concerns owned predominantly by women; and

(4) ensure that any notice of agency requirements or agency solicitation for contract opportunities is provided in a form that allows convenient and universal user access through a single, Government-wide point of entry.

(e) **IMPLEMENTATION.**—In carrying out the requirements of this section, the Administrator shall—

(1) issue policies to promote, to the maximum extent practicable, uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may require departures from uniform procedures and processes in appropriate cases, when warranted because of the agency mission;

(2) ensure that the head of each executive agency complies with the requirements of subsection (d); and

(3) consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

(f) **INAPPLICABILITY TO DEPARTMENT OF DEFENSE.**—In this section, the term “executive agency” does not include the Department of Defense.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3732; Pub. L. 114-328, div. A, title VIII, §833(b)(5)(A)(ii), Dec. 23, 2016, 130 Stat. 2285.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2301(a)	41:426(f).	Pub. L. 93-400, §30, as added Pub. L. 103-355, title IX, §9001(a), Oct. 13, 1994, 108 Stat. 3399; Pub. L. 105-85, title VIII, §850(a), Nov. 18, 1997, 111 Stat. 1847; Pub. L. 106-398, §1 [[div. A], title VIII, §810(d)], Oct. 30, 2000, 114 Stat. 1654A-210.
2301(b)	41:426(a).	
2301(c)	41:426(b).	
2301(d)	41:426(c).	
2301(e)	41:426(d).	

In this section, the text of 41:426(e) is omitted as obsolete because the last report was to be submitted not later than March 1, 2004.

In subsection (c), the word “executive” is added for clarity and for consistency in the revised section.

In subsection (e)(2), the words “with respect to the agency systems, technologies, procedures, and processes established pursuant to this section” are omitted as unnecessary.

Editorial Notes

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-328 added subsec. (f).

Executive Documents

STREAMLINING PROCUREMENT THROUGH ELECTRONIC COMMERCE

Memorandum of President of the United States, Oct. 28, 1993, 58 F.R. 58095, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President’s Management Council

The Federal Government spends \$200 billion annually buying goods and services. Unfortunately, the red tape and burdensome paperwork of the current procurement system increases costs, produces unnecessary delays, and reduces Federal work force productivity. Moving to an electronic commerce system to simplify and streamline the purchasing process will promote customer service and cost-effectiveness. The electronic exchange of acquisition information between the private sector and the Federal Government also will increase competition by improving access to Federal contracting opportunities for the more than 300,000 vendors currently doing business with the Government, particularly small businesses, as well as many other vendors who find access to bidding opportunities difficult under the current system. For these reasons, I am committed to fundamentally altering and improving the way the Federal Government buys goods and services by ensuring that electronic commerce is implemented for appropriate Federal purchases as quickly as possible.

1. OBJECTIVES.

The objectives of this electronic commerce initiative are to:

(a) exchange procurement information—such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents—electronically between the private sector and the Federal Government to the maximum extent practical;

(b) provide businesses, including small, small disadvantaged, and women-owned businesses, with greater access to Federal procurement opportunities;

(c) ensure that potential suppliers are provided simplified access to the Federal Government’s electronic commerce system;

(d) employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data; and

(e) use agency and industry systems and networks to enable the Government and potential suppliers to exchange information and access Federal procurement data.

2. IMPLEMENTATION.

The President's Management Council, in coordination with the Office of Federal Procurement Policy of the Office of Management and Budget, and in consultation with appropriate Federal agencies with applicable technical and functional expertise, as necessary, shall provide overall leadership, management oversight, and policy direction to implement electronic commerce in the executive branch through the following actions:

(a) by March 1994, define the architecture for the Government-wide electronic commerce acquisition system and identify executive departments or agencies responsible for developing, implementing, operating, and maintaining the Federal electronic system;

(b) by September 1994, establish an initial electronic commerce capability to enable the Federal Government and private vendors to electronically exchange standardized requests for quotations, quotes, purchase orders, and notice of awards and begin Government-wide implementation;

(c) by July 1995, implement a full scale Federal electronic commerce system that expands initial capabilities to include electronic payments, document interchange, and supporting databases; and

(d) by January 1997, complete Government-wide implementation of electronic commerce for appropriate Federal purchases, to the maximum extent possible.

This implementation schedule should be accelerated where practicable.

The head of each executive department or agency shall:

(a) ensure that budgetary resources are available, within approved budget levels, for electronic commerce implementation in each respective department or agency;

(b) assist the President's Management Council in implementing the electronic commerce system as quickly as possible in accordance with the schedules established herein; and

(c) designate one or more senior level employees to assist the President's Management Council and serve as a point of contact for the development and implementation of the Federal electronic commerce system within each respective department or agency.

3. NO PRIVATE RIGHTS CREATED.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

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

WILLIAM J. CLINTON.

§ 2302. Rights in technical data

(a) WHERE DEFINED.—The legitimate proprietary interest of the Federal Government and of a contractor in technical or other data shall be defined in regulations prescribed as part of the Federal Acquisition Regulation.

(b) GENERAL EXTENT OF REGULATIONS.—

(1) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under subsection (a) may not impair a right of the Federal Government or of a contractor with respect to a patent or copyright or another right in technical data otherwise established by law.

(2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOVERNMENT.—With respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that the Federal Government may not

require a person that has developed a product (or process offered or to be offered for sale to the public) to provide to the Federal Government technical data relating to the design (or development or manufacture of the product or process) as a condition of procurement by the Federal Government of the product or process. This paragraph does not apply to data that may be necessary for the Federal Government to operate and maintain the product or use the process if the Federal Government obtains it as an element of performance under the contract.

(c) TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.—

(1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise expressly provided by Federal statute, with respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that—

(A) the Federal Government has unlimited rights in technical data developed exclusively with Federal funds if delivery of the data—

(i) was required as an element of performance under a contract; and

(ii) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future; and

(B) the Federal Government and each agency of the Federal Government has an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Federal Government) technical data developed exclusively with Federal funds.

(2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOVERNMENT.—The requirements of paragraph (1) are in addition to and not in lieu of any other rights the Federal Government may have pursuant to law.

(d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The following factors shall be considered in prescribing regulations under subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219, 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the Federal Government in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(e) PROVISIONS REQUIRED IN CONTRACTS.—Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain ap-

propriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the Federal Government and the contractor or subcontractor (at any tier) regarding technical data to be delivered under the contract;

(2) specifying technical data to be delivered under the contract and schedules for delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for technical data to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the Federal Government to use the data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver the revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise another remedy the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3733.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2302(a)	41:418a(a) (1st sentence).	Pub. L. 93-400, §21, as added Pub. L. 98-577, title III, §301(a), Oct. 30, 1984, 98 Stat. 3074; Pub. L. 99-145, title IX, §961(d)(2), Nov. 8, 1985, 99 Stat. 704.
2302(b)	41:418a(a) (2d, last sentences).	
2302(c)	41:418a(b).	
2302(d)	41:418a(c).	
2302(e)	41:418a(d).	

In subsection (a), the words “Federal Acquisition Regulation” are substituted for “single system of Government-wide procurement regulations as defined in section 403(4) of this title” because section 3(a)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679, 102 Stat. 4055) substituted “Federal Acquisition Regulation” for “single system of Government-wide procurement regulations” in section 6 of the Office of Federal Procurement Policy Act (Public Law 93-400, 88 Stat. 797, 41:406) and because section 3(c) of the Office of Federal Procurement Policy Act

Amendments of 1988 (102 Stat. 4056) struck section 4(4) of the Office of Federal Procurement Policy Act (88 Stat. 797, 41:403(4)), as amended by section 4 of the Office of Federal Procurement Policy Act Amendments of 1983 (Public Law 98-191, 97 Stat. 1326), which had defined “single system of Government-wide procurement regulations”.

§ 2303. Ethics safeguards related to contractor conflicts of interest

(a) DEFINITION.—In this section, the term “relevant acquisition function” means an acquisition function closely associated with inherently governmental functions.

(b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.—

(1) DEVELOPMENT AND ISSUANCE OF POLICY.—

The Administrator shall develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) ELEMENTS OF POLICY.—The policy shall—

(A) define “personal conflict of interest” as it relates to contractor employees performing relevant acquisition functions; and

(B) require each contractor whose employees perform relevant acquisition functions to—

(i) identify and prevent personal conflicts of interest for the employees;

(ii) prohibit contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain;

(iii) report any personal conflict-of-interest violation by an employee to the applicable contracting officer or contracting officer’s representative as soon as it is identified;

(iv) maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(v) have procedures in place to screen for potential conflicts of interest for all employees performing relevant acquisition functions; and

(vi) take appropriate disciplinary action in the case of employees who fail to comply with policies established pursuant to this section.

(3) CONTRACT CLAUSE.—

(A) CONTENTS.—The Administrator shall develop a personal conflicts-of-interest clause or a set of clauses for inclusion in solicitations and contracts (and task or delivery orders) for the performance of relevant acquisition functions that sets forth—

(i) the personal conflicts-of-interest policy developed under this subsection; and

(ii) the contractor’s responsibilities under the policy.

(B) EFFECTIVE DATE.—Subparagraph (A) shall take effect 300 days after October 14, 2008, and shall apply to—

(i) contracts entered into on or after that effective date; and

(ii) task or delivery orders awarded on or after that effective date, regardless of whether the contracts pursuant to which the task or delivery orders are awarded are entered before, on, or after October 14, 2008.

(4) APPLICABILITY.—

(A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—This subsection shall apply to any contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of this title) if the contract is for the performance of relevant acquisition functions.

(B) PARTIAL APPLICABILITY.—If only a portion of a contract described in subparagraph (A) is for the performance of relevant acquisition functions, then this subsection applies only to that portion of the contract.

(c) BEST PRACTICES.—The Administrator shall, in consultation with the Director of the Office of Government Ethics, develop and maintain a repository of best practices relating to the prevention and mitigation of organizational and personal conflicts of interest in Federal contracting.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3735.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2303(a) 2303(b), (c)	no source. 41:405c(a), (c).	Pub. L. 110–417, [div. A], title VIII, §841(a), (c), Oct. 14, 2008, 122 Stat. 4537, 4539.

In this section, the words “relevant acquisition functions” are substituted for “acquisition functions closely associated with inherently governmental functions” because of subsection (a).

In subsection (b), the words “Not later than 270 days after the date of the enactment of this Act” are omitted because of section 6(f) of the bill.

In subsection (b)(4)(A), the words “Except as provided in subparagraph (B)” are omitted as unnecessary.

Statutory Notes and Related Subsidiaries

PREVENTING ORGANIZATIONAL CONFLICTS OF INTEREST
IN FEDERAL ACQUISITION

Pub. L. 117–324, Dec. 27, 2022, 136 Stat. 4439, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Preventing Organizational Conflicts of Interest in Federal Acquisition Act’.

“SEC. 2. PREVENTING ORGANIZATIONAL CONFLICTS OF INTEREST IN FEDERAL ACQUISITION.

“(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Dec. 27, 2022], the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation—

“(1) to provide and update—

“(A) definitions related to specific types of organizational conflicts of interest, including unequal access to information, impaired objectivity, and biased ground rules;

“(B) definitions, guidance, and illustrative examples related to relationships of contractors with public, private, domestic, and foreign entities that may cause contract support to be subject to potential organizational conflicts of interest, including undue influence; and

“(C) illustrative examples of situations related to the potential organizational conflicts of interest identified under this paragraph, including an example of the awarding by a Federal regulatory agency of a contract for consulting services to a contractor if employees of the contractor performing work under such contract are permitted by the contractor to simultaneously perform work under a contract for a private sector client under the regulatory purview of such agency;

“(2) to provide executive agencies with solicitation provisions and contract clauses to avoid or mitigate organizational conflicts of interest, for agency use as needed, that require contractors to disclose information relevant to potential organizational conflicts of interest and limit future contracting with respect to potential conflicts of interest with the work to be performed under awarded contracts;

“(3) to allow executive agencies to tailor such solicitation provisions and contract clauses as necessary to address risks associated with conflicts of interest and other considerations that may be unique to the executive agency;

“(4) to require executive agencies—

“(A) to establish or update as needed agency conflict of interest procedures to implement the revisions to the Federal Acquisition Regulation made under this section; and

“(B) to periodically assess and update such procedures as needed to address agency-specific conflict of interest issues; and

“(5) to update the procedures set forth in section 9.506 of the Federal Acquisition Regulation to permit contracting officers to take into consideration professional standards and procedures to prevent organizational conflicts of interest to which an offeror or contractor is subject.

“(b) EXECUTIVE AGENCY DEFINED.—In this section, the term ‘executive agency’ has the meaning given the term in section 133 of title 41, United States Code.”

DEADLINE FOR ISSUANCE OF STANDARD POLICY

Pub. L. 111–350, §6(f)(1), Jan. 4, 2011, 124 Stat. 3854, provided that: “The requirement in section 2303(b)(1) of title 41, United States Code, to issue a policy shall be done not later than 270 days after October 14, 2008.”

REVIEW OF FEDERAL ACQUISITION REGULATION
RELATING TO CONFLICTS OF INTEREST

Pub. L. 110–417, [div. A], title VIII, §841(b), Oct. 14, 2008, 122 Stat. 4539, provided that:

“(1) REVIEW.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Administrator for Federal Procurement Policy, in consultation with the Director of the Office of Government Ethics, shall review the Federal Acquisition Regulation to—

“(A) identify contracting methods, types and services that raise heightened concerns for potential personal and organizational conflicts of interest; and

“(B) determine whether revisions to the Federal Acquisition Regulation are necessary to—

“(i) address personal conflicts of interest by contractor employees with respect to functions other than those described in subsection (a) [now 41 U.S.C. 2303(b)]; or

“(ii) achieve sufficiently rigorous, comprehensive, and uniform government-wide policies to prevent and mitigate organizational conflicts of interest in Federal contracting.

“(2) REGULATORY REVISIONS.—If the Administrator determines pursuant to the review under paragraph (1)(B) that revisions to the Federal Acquisition Regulation are necessary, the Administrator shall work with the Federal Acquisition Regulatory Council to prescribe appropriate revisions to the regulations, including the development of appropriate contract clauses.

“(3) REPORT.—Not later than March 1, 2010, the Administrator shall submit to the Committees on Armed

Services of the Senate and House of Representatives, the Committee on Homeland Security and Governmental Affairs in the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a report setting forth such findings and determinations under subparagraphs (A) and (B) of paragraph (1), together with an assessment of any revisions to the Federal Acquisition Regulation that may be necessary.”

§ 2304. Conflict of interest standards for consultants

(a) **CONTENT OF REGULATIONS.**—The Administrator shall prescribe under this division Government-wide regulations that set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) procedures, including registration, certification, and enforcement requirements as may be appropriate, to promote compliance with the standards.

(b) **SERVICES SUBJECT TO REGULATIONS.**—Regulations required by subsection (a) apply to—

(1) advisory and assistance services provided to the Federal Government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of the services in the regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) other services related to Federal contracts as specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

(c) **INTELLIGENCE ACTIVITIES EXEMPTION.**—

(1) **ACTIVITIES THAT MAY BE EXEMPT.**—Intelligence activities as defined in section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a).

(2) **REPORT.**—The Director of National Intelligence shall report to the Intelligence and Appropriations Committees of Congress each January 1, delineating the activities and organizations that have been exempted under paragraph (1).

(d) **PRESIDENTIAL DETERMINATION.**—Before the regulations required by subsection (a) are prescribed, the President shall determine if prescribing the regulations will have a significantly adverse effect on the accomplishment of the mission of the Defense Department or another Federal agency. If the President determines that the regulations will have such an adverse effect, the President shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for the determination. If such a report is submitted, the requirement for the regulations shall be null and void.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3736.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2304(a)	41:405b(a).	Pub. L. 100-463, title VIII, § 8141, Oct. 1, 1988, 102 Stat. 2270-47.
2304(b)	41:405b(b).	
2304(c)	41:405b(d).	
2304(d)	41:405b(e).	

In this section, the text of 41:405b(c) is omitted as obsolete.

In subsection (a), before paragraph (1), the words “The Administrator shall prescribe under this division Government-wide regulations” are substituted for “Not later than 90 days after October 1, 1988, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter Government-wide regulations shall be issued under the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” to eliminate obsolete words.

In subsection (b), before paragraph (1), the words “the following types of consulting services” are omitted as unnecessary.

In subsection (c)(2), the words “Director of National Intelligence” are substituted for “Director of Central Intelligence” because of section 1081(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458, 50 U.S.C. 401 note). The words “each January 1” are substituted for “no later than January 1, 1990, and annually thereafter to eliminate obsolete and unnecessary words. The words “exempted under paragraph (1)” are substituted for “exempted from the regulations required by subsection (a) of this section in accordance with the provisions of this subsection” to eliminate unnecessary words.

Editorial Notes

REFERENCES IN TEXT

Executive Order 12333, referred to in subsec. (c)(1), is set out as a note under section 3001 of Title 50, War and National Defense.

§ 2305. Authority of Director of Office of Management and Budget not affected

This division does not limit the authorities and responsibilities of the Director of the Office of Management and Budget in effect on December 1, 1983.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2305	41:405(h)(2).	Pub. L. 93-400, § 6(h)(2), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, § 4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, § 5, Dec. 1, 1983, 97 Stat. 1328.

The words “in effect on December 1, 1983” are substituted for “current” for clarity.

§ 2306. Openness of meetings

The Administrator by regulation shall require that—

(1) formal meetings of the Office of Federal Procurement Policy, as designated by the Administrator, for developing procurement policies and regulations be open to the public; and

(2) public notice of each meeting be given not less than 10 days prior to the meeting.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2306	41:412(b).	Pub. L. 93-400, §14(b), Aug. 30, 1974, 88 Stat. 800; Pub. L. 96-83, §9, Oct. 10, 1979, 93 Stat. 652.

§ 2307. Comptroller General's access to information

The Administrator and personnel in the Office of Federal Procurement Policy shall furnish information the Comptroller General may require to discharge the responsibilities of the Comptroller General. For this purpose, the Comptroller General or representatives of the Comptroller General shall have access to all books, documents, papers, and records of the Office of Federal Procurement Policy.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3737.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2307	41:412(a).	Pub. L. 93-400, §14(a), Aug. 30, 1974, 88 Stat. 800.

SENATE REVISION AMENDMENT

In text, “representatives of the Comptroller General” substituted for “his representatives” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

§ 2308. Modular contracting for information technology

(a) USE.—To the maximum extent practicable, the head of an executive agency should use modular contracting for an acquisition of a major system of information technology.

(b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) PROVISIONS IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attaining those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(2) to the maximum extent practicable, a contract for an increment of an information technology acquisition should be awarded within 180 days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the solicitation resulting in award of the contract was issued.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3737.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2308	41:434.	Pub. L. 93-400, §38, formerly §35, as added Pub. L. 104-106, title LII, §5202(a), Feb. 10, 1996, 110 Stat. 690; renumbered §38, Pub. L. 104-201, title X, §1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.

§ 2309. Protection of constitutional rights of contractors

(a) PROHIBITION ON REQUIRING WAIVER OF RIGHTS.—A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive a right under the Constitution for a purpose relating to the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in section 3 of that Act (22 U.S.C. 6701)).

(b) PERMISSIBLE CONTRACT CLAUSES.—Subsection (a) does not prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections to ensure that the contractor is performing the contract in accordance with the provisions of the contract.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3738.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2309	41:436.	Pub. L. 93-400, §40, formerly §39, as added Pub. L. 105-277, title III, §308(a), Oct. 21, 1998, 112 Stat. 2681-879; renumbered §40, Pub. L. 108-136, title XIV, §1431(d)(2), Nov. 24, 2003, 117 Stat. 1672.

In subsection (a), the reference is to the Chemical Weapons Convention Implementation Act of 1998 rather than the Chemical Weapons Convention Implementation Act of 1997 to correct an error in the source provision.

Editorial Notes

REFERENCES IN TEXT

The Chemical Weapons Convention Implementation Act of 1998, referred to in subsec. (a), is Pub. L. 105-277, div. I, Oct. 21, 1998, 112 Stat. 2681-856, which is classified principally to chapter 75 (§6701 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 6701 of Title 22 and Tables.

§ 2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items

(a) **CRITERIA.**—A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

(1) the value of the contract or task order is estimated not to exceed \$25,000,000;

(2) the contract or task order sets forth specifically each task to be performed and, for each task—

(A) defines the task in measurable, mission-related terms;

(B) identifies the specific end products or output to be achieved; and

(C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) **REGULATIONS.**—Regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) **REPORT.**—Not later than 2 years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Homeland Security and Governmental Affairs and on Armed Services of the Senate and the Committees on Oversight and Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of the authority, both government-wide and for each department and agency.

(d) **EXPIRATION.**—The authority under this section expires 10 years after November 24, 2003.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3738.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2310	41:437.	Pub. L. 93-400, § 41, as added Pub. L. 108-136, title XIV, § 1431(a), Nov. 24, 2003, 117 Stat. 1671.

In subsection (c), the words “Committees on Homeland Security and Governmental Affairs” are substituted for “Committees on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words “Committees on Oversight and Government Reform” are substituted for “Committees on Government Reform” on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

§ 2311. Enhanced transparency on interagency contracting and other transactions

The Director of the Office of Management and Budget shall direct appropriate revisions to the Federal Procurement Data System or any successor system to facilitate the collection of complete, timely, and reliable data on interagency contracting actions and on transactions other than contracts, grants, and cooperative agreements issued pursuant to section 4021 of title 10 or similar authorities. The Director of the Office of Management and Budget shall ensure that data, consistent with what is collected for contract actions, is obtained on—

(1) interagency contracting actions, including data at the task or delivery-order level; and

(2) other transactions, including the initial award and any subsequent modifications awarded or orders issued (other than transactions that are reported through the Federal Assistance Awards Data System).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3739; Pub. L. 117-81, div. A, title XVII, § 1702(h)(11), Dec. 27, 2021, 135 Stat. 2158.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2311	41:405 note.	Pub. L. 110-417, [div. A], title VIII, § 874(a), Oct. 14, 2008, 122 Stat. 4558.

In the first sentence, the words “Not later than one year after the date of enactment of this Act” are omitted because of section 6(f) of the bill.

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81 substituted “section 4021” for “section 2371” in introductory provisions.

Statutory Notes and Related Subsidiaries

DEADLINE FOR REVISIONS IN FEDERAL PROCUREMENT DATA SYSTEM OR SUCCESSOR SYSTEM

Pub. L. 111-350, § 6(f)(2), Jan. 4, 2011, 124 Stat. 3855, provided that: “The requirement in section 2311 of title 41, United States Code, to direct appropriate revisions in the Federal Procurement Data System or any successor system shall be done not later than one year after October 14, 2008.”

§ 2312. Contingency Contracting Corps

(a) **DEFINITION.**—In this section, the term “Corps” means the Contingency Contracting Corps established in subsection (b).

(b) **ESTABLISHMENT.**—The Administrator of General Services, pursuant to policies established by the Office of Management and Budget, and in consultation with the Secretary of Defense and the Secretary of Homeland Security, shall establish a Government-wide Contingency Contracting Corps.

(c) **FUNCTION.**—The members of the Corps shall be available for deployment in responding to an emergency or major disaster, or a contingency operation, both within or outside the continental United States.

(d) **APPLICABILITY.**—The authorities provided in this section apply with respect to any pro-

curement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used—

(1) in support of a contingency operation as defined in section 101(a)(13) of title 10; or

(2) to respond to an emergency or major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(e) **MEMBERSHIP.**—Membership in the Corps shall be voluntary and open to all Federal employees and members of the Armed Forces who are members of the Federal acquisition workforce.

(f) **EDUCATION AND TRAINING.**—The Administrator of General Services may, in consultation with the Director of the Federal Acquisition Institute and the Chief Acquisition Officers Council, establish educational and training requirements for members of the Corps. Education and training carried out pursuant to the requirements shall be paid for from funds available in the acquisition workforce training fund established pursuant to section 1703(i) of this title.

(g) **SALARY.**—The salary for a member of the Corps shall be paid—

(1) in the case of a member of the Armed Forces, out of funds available to the Armed Force concerned; and

(2) in the case of a Federal employee, out of funds available to the employing agency.

(h) **AUTHORITY TO DEPLOY THE CORPS.**—

(1) **DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.**—The Director of the Office of Management and Budget shall have the authority, upon request by an executive agency, to determine when members of the Corps shall be deployed, with the concurrence of the head of the agency or agencies employing the members to be deployed.

(2) **SECRETARY OF DEFENSE.**—Nothing in this section shall preclude the Secretary of Defense or the Secretary's designee from deploying members of the Armed Forces or civilian personnel of the Department of Defense in support of a contingency operation as defined in section 101(a)(13) of title 10.

(i) **ANNUAL REPORT.**—

(1) **IN GENERAL.**—The Administrator of General Services shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate and the Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives an annual report on the status of the Corps as of September 30 of each fiscal year.

(2) **CONTENT.**—Each report under paragraph (1) shall include the number of members of the Corps, the total cost of operating the program, the number of deployments of members of the program, and the performance of members of the program in deployment.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3739.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2312 (except sub-section (a)).	41:440.	Pub. L. 93-400, §44, as added Pub. L. 110-417, [div. A], title VIII, §870(a), Oct. 14, 2008, 122 Stat. 4554.
2312(a)	no source.	

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.

§ 2313. Database for Federal agency contract and grant officers and suspension and debarment officials

(a) **IN GENERAL.**—Subject to the authority, direction, and control of the Director of the Office of Management and Budget, the Administrator of General Services shall establish and maintain a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants.

(b) **PERSONS COVERED.**—The database shall cover the following:

(1) Any person awarded a Federal agency contract or grant in excess of \$500,000, if any information described in subsection (c) exists with respect to the person.

(2) Any person awarded such other category or categories of Federal agency contract as the Federal Acquisition Regulation may provide, if any information described in subsection (c) exists with respect to the person.

(c) **INFORMATION INCLUDED.**—With respect to a covered person, the database shall include information (in the form of a brief description) for the most recent 5-year period regarding the following:

(1) Each civil or criminal proceeding, or any administrative proceeding, in connection with the award or performance of a contract or grant with the Federal Government with respect to the person during the period to the extent that the proceeding results in the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(i) the payment of a monetary fine or penalty of \$5,000 or more; or

(ii) the payment of a reimbursement, restitution, or damages in excess of \$100,000.

(D) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowl-

edgment of fault by the person if the proceeding could have led to any of the outcomes specified in subparagraph (A), (B), or (C).

(E) In an administrative proceeding—

(i) a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note; Public Law 111-84); or

(ii) a substantiated allegation, pursuant to section 1704(b) of the National Defense Authorization Act for Fiscal Year 2013, that the contractor, a subcontractor, or an agent of the contractor or subcontractor engaged in any of the activities described in section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)).

(2) Each Federal contract and grant awarded to the person that was terminated in the period due to default.

(3) Each Federal suspension and debarment of the person.

(4) Each Federal administrative agreement entered into by the person and the Federal Government in the period to resolve a suspension or debarment proceeding.

(5) Each final finding by a Federal official in the period that the person has been determined not to be a responsible source under paragraph (3) or (4) of section 113 of this title.

(6) Other information that shall be provided for purposes of this section in the Federal Acquisition Regulation.

(7) To the maximum extent practicable, information similar to the information covered by paragraphs (1) to (4) in connection with the award or performance of a contract or grant with a State government.

(8) Whether the person is included on any of the following lists maintained by the Office of Foreign Assets Control of the Department of the Treasury:

(A) The specially designated nationals and blocked persons list (commonly known as the “SDN list”).

(B) The sectoral sanctions identification list.

(C) The foreign sanctions evaders list.

(D) The list of persons sanctioned under the Iran Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C. 1701 note) that do not appear on the SDN list (commonly known as the “Non-SDN Iranian Sanctions Act list”).

(E) The list of foreign financial institutions subject to part 561 of title 31, Code of Federal Regulations.

(d) REQUIREMENTS RELATING TO DATABASE INFORMATION.—

(1) DIRECT INPUT AND UPDATE.—The Administrator of General Services shall design and maintain the database in a manner that allows the appropriate Federal agency officials to directly input and update information in the database relating to actions that the officials have taken with regard to contractors or grant recipients.

(2) TIMELINESS AND ACCURACY.—The Administrator of General Services shall develop policies to require—

(A) the timely and accurate input of information into the database;

(B) the timely notification of any covered person when information relevant to the person is entered into the database; and

(C) opportunities for any covered person to submit comments pertaining to information about the person for inclusion in the database.

(3) INFORMATION ON CORPORATIONS.—The information in the database on a person that is a corporation shall, to the extent practicable, include information on any parent, subsidiary, or successor entities to the corporation, and an identification of any beneficial owner of such corporation, in a manner designed to give the acquisition officials using the database a comprehensive understanding of the performance and integrity of the corporation in carrying out Federal contracts and grants.

(4) DEFINITIONS.—In this subsection:

(A) BENEFICIAL OWNERSHIP.—The term “beneficial ownership” has the meaning given under section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 133 Stat. 1505; 10 U.S.C. 2509 note).

(B) CORPORATION.—The term “corporation” means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.

(e) USE OF DATABASE.—

(1) AVAILABILITY TO GOVERNMENT OFFICIALS.—The Administrator of General Services shall ensure that the information in the database is available to appropriate acquisition officials of Federal agencies, other government officials as the Administrator of General Services determines appropriate, and, on request, the Chairman and Ranking Member of the committees of Congress having jurisdiction.

(2) REVIEW AND ASSESSMENT OF DATA.—

(A) IN GENERAL.—Before awarding a contract or grant in excess of the simplified acquisition threshold under section 134 of this title, the Federal agency official responsible for awarding the contract or grant shall review the database and consider all information in the database with regard to any offer or proposal, and in the case of a contract, shall consider other past performance information available with respect to the offeror in making any responsibility determination or past performance evaluation for the offeror.

(B) DOCUMENTATION IN CONTRACT FILE.—The contract file for each contract of a Federal agency in excess of the simplified acquisition threshold shall document the manner in which the material in the database was considered in any responsibility determination or past performance evaluation.

(f) DISCLOSURE IN APPLICATIONS.—The Federal Acquisition Regulation shall require that persons with Federal agency contracts and grants valued in total greater than \$10,000,000 shall—

(1) submit to the Administrator of General Services, in a manner determined appropriate by the Administrator of General Services, the

information subject to inclusion in the database as listed in subsection (c) current as of the date of submittal of the information under this subsection; and

(2) update the information submitted under paragraph (1) on a semiannual basis.

(g) **RULEMAKING.**—The Administrator of General Services shall prescribe regulations that may be necessary to carry out this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3740; Pub. L. 111–212, title III, § 3010, July 29, 2010, 124 Stat. 2340; Pub. L. 111–383, div. A, title VIII, § 834(d), Jan. 7, 2011, 124 Stat. 4279; Pub. L. 112–239, div. A, title VIII, § 852, title XVII, § 1704(d)(2), Jan. 2, 2013, 126 Stat. 1856, 2096; Pub. L. 113–291, div. A, title XII, § 1270, Dec. 19, 2014, 128 Stat. 3587; Pub. L. 116–283, div. A, title VIII, § 885, Jan. 1, 2021, 134 Stat. 3791.)

AMENDMENTS NOT SHOWN IN TEXT

This section was derived from section 417b of former Title 41, Public Contracts, which was amended by Pub. L. 111–212, title III, § 3010, July 29, 2010, 124 Stat. 2340, and Pub. L. 111–383, div. A, title VIII, § 834(d), Jan. 7, 2011, 124 Stat. 4279, prior to being repealed and reenacted as this section by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For applicability of those amendments to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 417b of former Title 41 was amended by adding at the end of subsec. (e)(1) the following: “In addition, the Administrator shall post all such information, excluding past performance reviews, on a publicly available Internet website.” and by adding at the end of subsec. (c)(1) the following new subparagraph:

“(E) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note).”

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2313	41:417b.	Pub. L. 110–417, [div. A], title VIII, § 872, Oct. 14, 2008, 122 Stat. 4555.

In subsection (a), the words “not later than one year after the date of the enactment of this Act” are omitted because of section 6(f) of the bill.

In subsection (c)(7), the word “practicable” is substituted for “practical” to correct an error in the law.

In subsection (f), the words “Not later than one year after the date of the enactment of this Act” are omitted because of section 6(f) of the bill. The words “shall require” are substituted for “shall be amended to require” to reflect the permanence of the provision.

In subsection (f)(2), the words “the information submitted under paragraph (1)” are substituted for “such information” for clarity.

Editorial Notes

REFERENCES IN TEXT

Section 1704(b) of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (c)(1)(E)(ii), is section 1704(b) of Pub. L. 112–239, which is classified to section 7104b(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2021—Subsec. (d)(3). Pub. L. 116–283, § 885(1), inserted “, and an identification of any beneficial owner of such corporation,” after “to the corporation”.

Subsec. (d)(4). Pub. L. 116–283, § 885(2), added par. (4).

2014—Subsec. (c)(8). Pub. L. 113–291 added par. (8).

2013—Subsec. (c)(1)(E). Pub. L. 112–239, § 1704(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E), as added by Pub. L. 111–383, § 834(d), read as follows: “(E) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to section 823(d) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2302 note).” See Amendments Not Shown in Text note above.

Subsec. (d)(3). Pub. L. 112–239, § 852, added par. (3).

Statutory Notes and Related Subsidiaries

DEADLINE FOR ESTABLISHING DATABASE

Pub. L. 111–350, § 6(f)(3), Jan. 4, 2011, 124 Stat. 3855, provided that: “The requirement in section 2313(a) of title 41, United States Code, to establish a database shall be done not later than one year after October 14, 2008.”

DEADLINE FOR AMENDING FEDERAL ACQUISITION REGULATION

Pub. L. 111–350, § 6(f)(4), Jan. 4, 2011, 124 Stat. 3855, provided that: “The Federal Acquisition Regulation shall be amended to meet the requirements of sections 2313(f), 3302(b) and (d), 4710(b), and 4711(b) of title 41, United States Code, not later than one year after October 14, 2008.”

DIVISION C—PROCUREMENT

DEFINITIONS

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

CHAPTER 31—GENERAL

- Sec. 3101. Applicability.
- 3102. Delegation and assignment of powers, functions, and responsibilities.
- 3103. Acquisition programs.
- 3104. Small business concerns.
- 3105. New contracts and grants and merit-based selection procedures.
- 3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division.

Statutory Notes and Related Subsidiaries

COST-EFFECTIVENESS ANALYSIS OF EQUIPMENT RENTAL

Pub. L. 115–254, div. B, title V, § 555, Oct. 5, 2018, 132 Stat. 3381, as amended by Pub. L. 117–81, div. A, title XVII, § 1702(i)(1), Dec. 27, 2021, 135 Stat. 2159, provided that:

“(a) **AGENCY ANALYSIS OF EQUIPMENT ACQUISITION.**—

“(1) **IN GENERAL.**—Except as provided for under subsection (d), the head of each executive agency shall acquire equipment using the method of acquisition most advantageous to the Federal Government based on a case-by-case analysis of comparative costs and other factors, including those factors listed in section 7.401 of the Federal Acquisition Regulation.

“(2) **METHODS OF ACQUISITION.**—The methods of acquisition to be compared in the analysis under paragraph (1) shall include, at a minimum, purchase, short-term rental or lease, long-term rental or lease, interagency acquisition, and acquisition agreements