

§ 152. Competitive procedures

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

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

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

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

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

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

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

SUBCHAPTER I—GENERAL

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SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

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AMENDMENT OF ANALYSIS

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

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

Editorial Notes

AMENDMENTS

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

VII, §702(b)(2), Dec. 26, 2013, 127 Stat. 1189, struck out item 1127 “Determining benchmark compensation amount”.

SUBCHAPTER I—GENERAL

§ 1101. Office of Federal Procurement Policy

(a) ORGANIZATION.—There is an Office of Federal Procurement Policy in the Office of Management and Budget.

(b) PURPOSES.—The purposes of the Office of Federal Procurement Policy are to—

(1) provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies; and

(2) promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(c) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be appropriated each fiscal year for the Office of Federal Procurement Policy to carry out the responsibilities of the Office for that fiscal year.

(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)
1101(a), (b)	41:404(a).	Pub. L. 93–400, §(5)(a), Aug. 30, 1974, 88 Stat. 797; Pub. L. 104–106, title XLIII, §4305(a)(1), Feb. 10, 1996, 110 Stat. 665.
1101(c)	41:410.	Pub. L. 93–400, §11, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96–83, §7, Oct. 10, 1979, 93 Stat. 651; Pub. L. 98–191, §6, Dec. 1, 1983, 97 Stat. 1329; Pub. L. 100–679, §3(b), Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104–106, title XLIII, §4305(c)(2), Feb. 10, 1996, 110 Stat. 665.

Statutory Notes and Related Subsidiaries

PROMOTING RIGOROUS AND INNOVATIVE COST EFFICIENCIES FOR FEDERAL PROCUREMENT AND ACQUISITIONS

Pub. L. 117–88, Feb. 22, 2022, 136 Stat. 20, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Promoting Rigorous and Innovative Cost Efficiencies for Federal Procurement and Acquisitions Act of 2021’ or the ‘PRICE Act of 2021’.

“SEC. 2. FINDINGS.

“Congress finds that—

“(1) small business participation in the Federal marketplace is key to ensuring a strong industrial base;

“(2) the Business Opportunity Development Reform Act of 1988 (Public Law 100–656) [see Tables for classification] sets forth the requirement for the President to establish Government-wide goals for procurement contracts awarded to small businesses;

“(3) each year, the Small Business Administration works with each Federal agency to set their respective contracting goals and publishes a scorecard to ensure that the total of all Federal agency goals meets the required targets for the Federal Government;

“(4) the Department has received among the highest scorecard letter grades 10 years in a row and is the largest Federal agency to have such a track record;

“(5) in virtually every segment of the economy of the United States, including the homeland security community, there are small businesses working to support the mission and playing a critical role in delivering efficient and innovative solutions to the acquisition needs of the Federal Government;

“(6) the Procurement Innovation Lab of the Department—

“(A) is aimed at experimenting with innovative acquisition techniques across the Homeland Security Enterprise;

“(B) provides a forum to test new ideas, share lessons learned, and promote best practices;

“(C) fosters cultural changes that promote innovation and managed risk taking through a continuous cycle of testing, obtaining feedback, sharing information, and retesting where appropriate; and

“(D) aims to make the acquisition process more smooth and innovative within the construct of the Federal Acquisition Regulation for both the Federal Government and contractors; and

“(7) despite progress in the adoption of new and better business practices by many Federal agencies, the overall adoption of modernized business practices and advanced technologies across the Federal Government remains slow and uneven.

“SEC. 3. DEFINITIONS.

“In this Act:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator for Federal Procurement Policy.

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Homeland Security and

Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

“(B) the Committee on Homeland Security, the Committee on Oversight and Reform, and the Committee on Small Business of the House of Representatives.

“(3) COUNCIL.—The term ‘Council’ means the Chief Acquisition Officers Council established under section 1311 of title 41, United States Code.

“(4) DEPARTMENT.—The term ‘Department’ means the Department of Homeland Security.

“(5) HOMELAND SECURITY ENTERPRISE.—The term ‘Homeland Security Enterprise’ has the meaning given the term in section 221(h) of the Homeland Security Act of 2002 (6 U.S.C. 661(h)) [see 6 U.S.C. 650(11)].

“(6) SCORECARD.—The term ‘scorecard’ means the scorecard described in section 868(b) of the National Defense Authorization Act for Fiscal Year 2016 [Pub. L. 114–92] (15 U.S.C. 644 note) [now 15 U.S.C. 644(y)(6)].

“(7) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

“(8) SMALL BUSINESS.—The term ‘small business’ means—

“(A) a qualified HUBZone small business concern, a small business concern, a small business concern owned and controlled by service-disabled veterans, or a small business concern owned and controlled by women, as those terms are defined in section 3 of the Small Business Act (15 U.S.C. 632);

“(B) a small business concern owned and controlled by socially and economically disadvantaged individuals, as defined in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)); or

“(C) a small business concern unconditionally owned by an economically disadvantaged Indian tribe or an economically disadvantaged Native Hawaiian organization that qualifies as a socially and economically disadvantaged small business concern, as defined in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

“(9) UNDER SECRETARY.—The term ‘Under Secretary’ means the Under Secretary for Management of the Department.

“SEC. 4. PROCUREMENT INNOVATION LAB REPORT.

“(a) REPORT.—The Under Secretary shall publish an annual report on a website of the Department on Pro-

curement Innovation Lab projects that have used innovative techniques within the Department to accomplish—

- “(1) improving or encouraging better competition;
- “(2) reducing time to award;
- “(3) cost savings;
- “(4) better mission outcomes; or

“(5) meeting the goals for contracts awarded to small business concerns under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

“(b) EDUCATION.—The Under Secretary shall develop and disseminate guidance and offer training for contracting officers, contracting specialists, program managers, and other personnel of the Department, as determined appropriate by the Under Secretary, concerning when and how to use the innovative procurement techniques of the Department.

“(c) BEST PRACTICES.—The Under Secretary shall share best practices across the Department and make available to other Federal agencies information to improve procurement methods and training, as determined appropriate by the Under Secretary.

“(d) SUNSET.—This section shall cease to be effective on the date that is 3 years after the date of enactment of this Act [Feb. 22, 2022].

“SEC. 5. COUNCIL.

“(a) ESTABLISHMENT.—Not later than 45 days after the date of enactment of this Act [Feb. 22, 2022], the Administrator shall convene the Council to examine best practices for acquisition innovation in contracting in the Federal Government, including small business contracting in accordance with the goals established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

“(b) WORKING GROUP.—The Council may form a working group to address the requirements of this section, which, if formed, shall—

- “(1) be chaired by the Administrator or a designee of the Administrator; and
- “(2) be composed of—

“(A) the Chief Procurement Officer of the Department;

“(B) Council members from—

- “(i) the General Services Administration;
- “(ii) the Department of Defense;
- “(iii) the Department of the Treasury;
- “(iv) the Department of Veterans Affairs;
- “(v) the Department of Health and Human Services;

“(vi) the Small Business Administration; and

“(vii) such other Federal agencies as determined by the chair of the Council from among Federal agencies that have demonstrated significant, sustained progress using innovative acquisition practices and technologies, including for small business contracting, during each of the 3 years preceding the date of enactment of this Act; and

“(C) other employees, as determined appropriate by the chair of the Council, of Federal agencies with the requisite senior experience to make recommendations to improve Federal agency efficiency, effectiveness, and economy, including in promoting small business contracting.

“(c) DUTIES OF THE COUNCIL.—The Council, or a working group formed under subsection (b), shall—

“(1) convene not later than 90 days after the date of enactment of this Act and thereafter on a quarterly basis until the Council submits the report required under subsection (d)(1); and

“(2) conduct outreach with the workforce and the public in meeting the requirements under subsection (d)(1).

“(d) REPORT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Council shall submit to the appropriate congressional committees a report that describes—

“(A) innovative acquisition practices and applications of technologies that have worked well in

achieving better procurement outcomes, including increased efficiency, improved program outcomes, better customer experience, and meeting or exceeding the goals under section 15(g) of the Small Business Act (15 U.S.C. 644(g)), and the reasons why those practices have succeeded;

“(B) steps to identify and adopt transformational commercial business practices, modernized data analytics, and advanced technologies that allow decision making to occur in a more friction-free buying environment and improve customer experience; and

“(C) any recommendations for statutory changes to accelerate the adoption of innovative acquisition practices.

“(2) BRIEFING.—Not later than 18 months after the date of enactment of this Act, the Administrator shall brief the appropriate congressional committees on the means by which the findings and recommendations of the report have been disseminated under paragraph (3).

“(3) PUBLICATION AND DISSEMINATION OF REPORT FINDINGS.—To promote more rapid adoption of acquisition best practices, the Administrator shall—

“(A) publish the report required under paragraph (1) on the website of the Office of Management and Budget and on the Innovation Hub on the Acquisition Gateway or any successor Government-wide site available for increasing awareness of resources dedicated to procurement innovation; and

“(B) encourage the head of each Federal agency to maintain a site on the website of the Federal agency for acquisition and contracting professionals, program managers, members of the public, and others as appropriate that is—

“(i) dedicated to acquisition innovation; and

“(ii) identifies—

“(I) resources, including the acquisition innovation advocate and industry liaison of the Federal agency;

“(II) learning assets for the workforce, including the findings and recommendations made in the report required under paragraph (1);

“(III) events to build awareness and understanding of innovation activities;

“(IV) award recognition programs and recent recipients; and

“(V) upcoming plans to leverage innovative practices and technologies.

“(e) EXPERTS.—In carrying out the duties of the Council under this section, the Council is encouraged to consult with governmental and nongovernmental experts.

“(f) TERMINATION.—The duties of the Council as set forth in this section shall terminate 30 days after the date on which the Council conducts the briefing required under subsection (d)(2).”

REQUIREMENTS FOR USE OF APPROPRIATIONS BY EXECUTIVE AGENCIES FOR SERVICES BY CONTRACT

Pub. L. 102-394, title V, §502, Oct. 6, 1992, 106 Stat. 1825, provided that: “No part of any appropriation contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be expended by an executive agency, as referred to in the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 401 et seq.) [see this division (except sections 1123, 2303, 2304, and 2313)], pursuant to any obligation for services by contract, unless such executive agency has awarded and entered into such contract in full compliance with such Act and regulations promulgated thereunder.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title V, §502, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101-517, title V, §502, Nov. 5, 1990, 104 Stat. 2221.

Pub. L. 101-166, title V, §502, Nov. 21, 1989, 103 Stat. 1189.

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

SUPERSEURE 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-

ministrator of General Services shall provide the Federal Acquisition Institute with amounts from the acquisition workforce training fund established under section 1703(i) of this title sufficient to meet the annual budget for the Federal Acquisition Institute requested by the Administrator under paragraph (1).

(c) **FEDERAL ACQUISITION INSTITUTE BOARD OF DIRECTORS.**—

(1) **REPORTING TO ADMINISTRATOR.**—The Federal Acquisition Institute shall report through its Board of Directors directly to the Administrator.

(2) **COMPOSITION.**—The Board shall be composed of not more than 8 individuals from the Federal Government representing a mix of acquisition functional areas, all of whom shall be appointed by the Administrator.

(3) **DUTIES.**—The Board shall provide general direction to the Federal Acquisition Institute to ensure that the Institute—

(A) meets its statutory requirements;

(B) meets the needs of the Federal acquisition workforce;

(C) implements appropriate programs;

(D) coordinates with appropriate organizations and groups that have an impact on the Federal acquisition workforce;

(E) develops and implements plans to meet future challenges of the Federal acquisition workforce; and

(F) works closely with the Defense Acquisition University.

(4) **RECOMMENDATIONS.**—The Board shall make recommendations to the Administrator regarding the development and execution of the annual budget of the Federal Acquisition Institute.

(d) **DIRECTOR.**—The Director of the Federal Acquisition Institute shall be appointed by, be subject to the direction and control of, and report directly to the Administrator.

(e) **ANNUAL REPORT.**—The Administrator shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives an annual report on the projected budget needs and expense plans of the Federal Acquisition Institute to fulfill its mandate.

(Added Pub. L. 112–81, div. A, title VIII, § 864(b)(1), Dec. 31, 2011, 125 Stat. 1523.)

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.

CONSTRUCTION

Pub. L. 112–81, div. A, title VIII, § 864(e), Dec. 31, 2011, 125 Stat. 1525, provided that: “Nothing in this section [enacting this chapter and amending sections 1122, 1703, and 1704 of this title], or the amendments made by this

section, shall be construed to preclude the Secretary of Defense from establishing acquisition workforce policies, procedures, training standards, and certification requirements for acquisition positions in the Department of Defense, as provided in chapter 87 of title 10, United States Code.”

TRAINING COURSE ON HUMAN TRAFFICKING AND GOVERNMENT CONTRACTING

Pub. L. 115–425, title I, § 113, Jan. 8, 2019, 132 Stat. 5477, provided that: “Any curriculum, including any continuing education curriculum, for the acquisition workforce used by the Federal Acquisition Institute established under section 1201 of title 41, United States Code, shall include at least 1 course, lasting at least 30 minutes, regarding the law and regulations relating to human trafficking and contracting with the Federal Government.”

CHAPTER 13—ACQUISITION COUNCILS

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

Sec.

1301. Definition.

1302. Establishment and membership.

1303. Functions and authority.

1304. Contract clauses and certifications.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

1311. Establishment and membership.

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SUBCHAPTER III—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

1321. Definitions.

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1326. Requirements for executive agencies.

1327. Judicial review procedures.

1328. Termination.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115–390, title II, § 202(b), Dec. 21, 2018, 132 Stat. 5188, added item for subchapter III and items 1321 to 1328.

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

§ 1301. Definition

In this subchapter, the term “Council” means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3691.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1301	41:403(17).	Pub. L. 93–400, § 4(17), as added Pub. L. 108–375, title VIII, § 807(b), Oct. 28, 2004, 118 Stat. 2011.

§ 1302. Establishment and membership

(a) **ESTABLISHMENT.**—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procure-

ment regulatory activities in the Federal Government.

(b) MEMBERSHIP.—

(1) MAKEUP OF COUNCIL.—The Council consists of—

- (A) the Administrator;
- (B) the Secretary of Defense;
- (C) the Administrator of National Aeronautics and Space; and
- (D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

(A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition and Sustainment; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(c) of this title.

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3691; Pub. L. 116-92, div. A, title IX, § 902(88), Dec. 20, 2019, 133 Stat. 1554.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1302(a)	41:421(a).	Pub. L. 93-400, § 25(a), (b), as added Pub. L. 100-679, § 4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 101-510, title VIII, § 807, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 104-106, title XLIII, § 4322(a)(2), Feb. 10, 1996, 110 Stat. 677.
1302(b)	41:421(b).	

In subsection (a), the words “(hereinafter in this section referred to as the ‘Council’)” are omitted as unnecessary.

In subsection (b)(2)(A)(i), the words “Under Secretary of Defense for Acquisition, Technology, and Logistics” are substituted for “Under Secretary of Defense for Acquisition and Technology” because of section 911(a)(1) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65, 113 Stat. 717, 10 U.S.C. 133 note).

In subsection (b)(2)(A)(ii), the cross-reference to section 16(3) of the Office of Federal Procurement Policy Act (41:414(3)) is treated as a cross-reference to section 16(c) of the Act to reflect the amendment of section 16 by section 1421(a)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1666).

Editorial Notes

AMENDMENTS

2019—Subsec. (b)(2)(A)(i). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and

Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

Statutory Notes and Related Subsidiaries

STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102-190, div. A, title VIII, § 809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103-160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106-65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: “For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(b)(2)) [now 41 U.S.C. 1302(b)(2)], the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.”

§ 1303. Functions and authority

(a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapter 4 of title 10, chapter 137 legacy provisions (as such term is defined in section 3016 of title 10), and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.),¹ shall jointly issue and maintain in accordance with subsection (d) a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation.

(2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to procurement issued by an executive agency shall be limited to—

(A) regulations essential to implement Government-wide policies and procedures within the agency; and

(B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with the Council, shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies prescribed pursuant to section 1121(b) of this title.

(4) REQUEST TO REVIEW REGULATION.—

(A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a person may request the Administrator to review a regulation relating to procurement on the basis that the regulation is inconsistent with the Federal Acquisition Regulation.

(B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its face, state a valid basis for the review, the Administrator shall complete the review not later than 60 days after receiving the request. The time for completion of the review may be ex-

¹ See References in Text note below.

tended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation otherwise should be revised to remove an inconsistency with the policies prescribed under section 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take other action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary to remove the inconsistency. If the Administrator determines that the regulation, although not inconsistent with the Federal Acquisition Regulation or those policies, should be revised to improve compliance with the Regulation or policies, the Administrator shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 as may be necessary and appropriate.

(6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the Administrator shall be in writing and made publicly available.

(b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

(1) IN GENERAL.—Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to section 1302(b) of this title shall—

(A) approve or disapprove all regulations relating to procurement that are proposed for public comment, prescribed in final form, or otherwise made effective by that agency before the regulation may be prescribed in final form, or otherwise made effective, except that the official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(B) carry out the responsibilities of that agency set forth in chapter 35 of title 44 for each information collection request that relates to procurement rules or regulations; and

(C) eliminate or reduce—

(i) any redundant or unnecessary levels of review and approval in the procurement system of that agency; and

(ii) redundant or unnecessary procurement regulations which are unique to that agency.

(2) LIMITATION ON DELEGATION.—The authority to review and approve or disapprove regulations under paragraph (1)(A) may not be delegated to an individual outside the office of the official who represents the agency on the Council pursuant to section 1302(b) of this title.

(c) GOVERNING POLICIES.—All actions of the Council and of members of the Council shall be

in accordance with and furtherance of the policies prescribed under section 1121(b) of this title.

(d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION REGULATION.—Subject to section 1121(d) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3691; Pub. L. 117-81, div. A, title XVII, §1702(h)(2), 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>
1303(a)	41:421(c).	Pub. L. 93-400, §25(c)-(f), as added Pub. L. 100-679, §4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104-201, title VIII, §822, title X, §1074(f)(3), Sept. 23, 1996, 110 Stat. 2609, 2661; Pub. L. 105-85, title VIII, §841(d), Nov. 18, 1997, 111 Stat. 1843.
1303(b)	41:421(d).	
1303(c)	41:421(e).	
1303(d)	41:421(f).	

In subsection (a)(6), the text of 41:421(c)(6) (last sentence) is omitted because 41:407 was repealed by section 4305(b) of the National Defense Authorization Act of Fiscal Year 1996 (Public Law 104-106, 110 Stat. 665).

In subsection (b)(1)(A), the words “after 60 days after November 17, 1988” are omitted as obsolete.

In subsection (b)(1)(B), the words “(as that term is defined in section 3502(11) of title 44)” are omitted because chapter 35 of title 44 was amended generally by the Paperwork Reduction Act of 1995 (Public Law 104-13, 109 Stat. 163) and 44:3502 no longer defines “information collection request”. The term “information collection request” is retained in this section of the revised title, however, because 44:ch. 35 still contains provisions about requests for collection of information.

Editorial Notes

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (a)(1), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, which was classified principally to chapter 26 (§2451 et seq.) of Title 42, The Public Health and Welfare, and was substantially repealed and restated as chapter 201 (§20101 et seq.) of Title 51, National and Commercial Space Programs, by Pub. L. 111-314, §§3, 6, Dec. 18, 2010, 124 Stat. 3328, 3444. For complete classification of this Act to the Code, see Short Title of 1958 Act note set out under section 10101 of Title 51 and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117-81 substituted “chapter 4 of title 10, chapter 137 legacy provisions (as such term is defined in section 3016 of title 10)” for “chapters 4 and 137 of title 10”.

§ 1304. Contract clauses and certifications

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an

official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

(A) the certification requirement is specifically imposed by statute; or

(B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term “head of the executive agency” with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) the certification requirement is specifically imposed by statute; or

(ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3693.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1304(a)	41:425(a).	Pub. L. 93–400, § 29, as added Pub. L. 103–355, title I, § 1093, Oct. 13, 1994, 108 Stat. 3273; Pub. L. 104–106, title XLIII, § 4301(b)(2)(A), (c), Feb. 10, 1996, 110 Stat. 657, 658.
1304(b)(1) 1304(b)(2), (3).	41:425(b). 41:425(c).	

Statutory Notes and Related Subsidiaries

CURRENT CERTIFICATION REQUIREMENTS

Pub. L. 104–106, div. D, title XLIII, § 4301(b)(1), Feb. 10, 1996, 110 Stat. 656, provided that:

“(A) Not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996], the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

“(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering

and enforcing the particular regulation that contains the certification requirement; and

“(ii) the Administrator approves in writing the retention of the certification requirement.

“(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

“(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

“(II) the head of the executive agency approves in writing the retention of such certification requirement.

“(ii) For purposes of clause (i), the term ‘head of the executive agency’ with respect to a military department means the Secretary of Defense.”

Executive Documents

ADDRESSING TAX DELINQUENCY BY GOVERNMENT CONTRACTORS

Memorandum of President of the United States, Jan. 20, 2010, 75 F.R. 3979, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than \$5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to direct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Acquisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors’ certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treasury and other agency heads, to evaluate practices of contracting officers and debarring officials in response to contractors’ certifications of serious tax delinquencies and to provide me, within 90 days, recommendations on process improvements to ensure these contractors are not awarded new contracts, including a plan to make contractor certifications available in a Government-wide database, as is already being done with other information on contractors.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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

BARACK OBAMA.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

§ 1311. Establishment and membership

(a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisition Officers Council.

(b) MEMBERSHIP.—The members of the Council are—

- (1) the Deputy Director for Management of the Office of Management and Budget;
- (2) the Administrator;
- (3) the Under Secretary of Defense for Acquisition and Sustainment;
- (4) the chief acquisition officer of each executive agency that is required to have a chief acquisition officer under section 1702 of this title and the senior procurement executive of each military department; and
- (5) any other senior agency officer of each executive agency, appointed by the head of the agency in consultation with the Chairman of the Council, who can effectively assist the Council in performing the functions set forth in section 1312(b) of this title and supporting the associated range of acquisition activities.

(c) LEADERSHIP AND SUPPORT.—

(1) CHAIRMAN.—The Deputy Director for Management of the Office of Management and Budget is the Chairman of the Council.

(2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be selected by the Council from among its members. The Vice Chairman serves for one year and may serve multiple terms.

(3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the Council on behalf of the Deputy Director for Management.

(4) SUPPORT.—The Administrator of General Services shall provide administrative and other support for the Council.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3694; Pub. L. 116-92, div. A, title IX, §902(89), Dec. 20, 2019, 133 Stat. 1554.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1311(a)	41:414b(a).	Pub. L. 93-400, §16A(a)-(c), as added Pub. L. 108-136, title XIV, §1422(a), Nov. 24, 2003, 117 Stat. 1668.
1311(b)	41:414b(b)(1) (words before comma), (2)-(5).	
1311(c)(1)	41:414b(b)(1) (words after comma).	
1311(c)(2)	41:414b(c)(2).	
1311(c)(3)	41:414b(c)(1).	
1311(c)(4)	41:414b(c)(3).	

Editorial Notes

AMENDMENTS

2019—Subsec. (b)(3). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

§ 1312. Functions

(a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the principal interagency forum for monitoring and improving the Federal acquisition system.

(b) FUNCTIONS.—The Council shall perform functions that include the following:

(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.

(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.

(5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.

(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.

(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3694.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1312(a)	41:414b(d).	Pub. L. 93-400, §16A(d), (e), as added Pub. L. 108-136, title XIV, §1422(a), Nov. 24, 2003, 117 Stat. 1668.
1312(b)	41:414b(e).	

SUBCHAPTER III—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

§ 1321. Definitions

In this subchapter:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term “appropriate congressional committees and leadership” means—

(A) the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Select Committee on Intelligence, and the majority and minority leader of the Senate; and

(B) the Committee on Oversight and Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Homeland Security, the Committee on Armed Services, the Committee on Energy and Commerce, the Permanent Select Committee on Intelligence, and the Speaker and minority leader of the House of Representatives.

(2) COUNCIL.—The term “Council” means the Federal Acquisition Security Council established under section 1322(a) of this title.

(3) COVERED ARTICLE.—The term “covered article” has the meaning given that term in section 4713 of this title.

(4) COVERED PROCUREMENT ACTION.—The term “covered procurement action” has the meaning given that term in section 4713 of this title.

(5) INFORMATION AND COMMUNICATIONS TECHNOLOGY.—The term “information and communications technology” has the meaning given that term in section 4713 of this title.

(6) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(7) NATIONAL SECURITY SYSTEM.—The term “national security system” has the meaning given that term in section 3552 of title 44.

(8) SUPPLY CHAIN RISK.—The term “supply chain risk” has the meaning given that term in section 4713 of this title.

(Added Pub. L. 115–390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5178.)

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.

EFFECTIVE DATE

Pub. L. 115–390, title II, §202(c), Dec. 21, 2018, 132 Stat. 5188, provided that: “The amendments made by this section [enacting this subchapter] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 21, 2018] and shall apply to contracts that are awarded before, on, or after that date.”

Pub. L. 115–390, title II, §205, Dec. 21, 2018, 132 Stat. 5193, provided that: “This title [see section 201 of Pub. L. 115–390, set out as a Short Title of 2018 note under section 101 of this title] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 21, 2018].”

IMPLEMENTATION

Pub. L. 115–390, title II, §202(d), Dec. 21, 2018, 132 Stat. 5188, provided that:

“(1) INTERIM FINAL RULE.—Not later than one year after the date of the enactment of this Act [Dec. 21, 2018], the Federal Acquisition Security Council shall prescribe an interim final rule to implement subchapter III of chapter 13 of title 41, United States Code, as added by subsection (a).

“(2) FINAL RULE.—Not later than one year after prescribing the interim final rule under paragraph (1) and considering public comments with respect to such interim final rule, the Council shall prescribe a final rule to implement subchapter III of chapter 13 of title 41, United States Code, as added by subsection (a).

“(3) FAILURE TO ACT.—

“(A) IN GENERAL.—If the Council does not issue a final rule in accordance with paragraph (2) on or before the last day of the one-year period referred to in that paragraph, the Council shall submit to the appropriate congressional committees and leadership, not later than 10 days after such last day and every 90 days thereafter until the final rule is issued, a report explaining why the final rule was not timely issued and providing an estimate of the earliest date on which the final rule will be issued.

“(B) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP DEFINED.—In this paragraph, the term ‘appropriate congressional committees and leadership’ has the meaning given that term in section 1321 of title 41, United States Code, as added by subsection (a).”

§ 1322. Federal Acquisition Security Council establishment and membership

(a) ESTABLISHMENT.—There is established in the executive branch a Federal Acquisition Security Council.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The following agencies shall be represented on the Council:

(A) The Office of Management and Budget.

(B) The General Services Administration.

(C) The Department of Homeland Security, including the Cybersecurity and Infrastructure Security Agency.

(D) The Office of the Director of National Intelligence, including the National Counterintelligence and Security Center.

(E) The Department of Justice, including the Federal Bureau of Investigation.

(F) The Department of Defense, including the National Security Agency.

(G) The Department of Commerce, including the National Institute of Standards and Technology.

(H) Such other executive agencies as determined by the Chairperson of the Council.

(2) LEAD REPRESENTATIVES.—

(A) DESIGNATION.—

(i) IN GENERAL.—Not later than 45 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, the head of each agency represented on the Council shall designate a representative of that agency as the lead representative of the agency on the Council.

(ii) REQUIREMENTS.—The representative of an agency designated under clause (i) shall have expertise in supply chain risk management, acquisitions, or information and communications technology.

(B) FUNCTIONS.—The lead representative of an agency designated under subparagraph (A) shall ensure that appropriate personnel, including leadership and subject matter experts of the agency, are aware of the business of the Council.

(c) CHAIRPERSON.—

(1) DESIGNATION.—Not later than 45 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, the Director of the Office of Management and Budget shall designate a senior-level official from the Office of Management and Budget to serve as the Chairperson of the Council.

(2) FUNCTIONS.—The Chairperson shall perform functions that include—

(A) subject to subsection (d), developing a schedule for meetings of the Council;

(B) designating executive agencies to be represented on the Council under subsection (b)(1)(H);

(C) in consultation with the lead representative of each agency represented on

the Council, developing a charter for the Council; and

(D) not later than 7 days after completion of the charter, submitting the charter to the appropriate congressional committees and leadership.

(d) **MEETINGS.**—The Council shall meet not later than 60 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018 and not less frequently than quarterly thereafter.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5178.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, referred to in subsecs. (b)(2)(A)(i), (c)(1), and (d), is the date of enactment of Pub. L. 115-390, which was approved Dec. 21, 2018.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

§ 1323. Functions and authorities

(a) **IN GENERAL.**—The Council shall perform functions that include the following:

(1) Identifying and recommending development by the National Institute of Standards and Technology of supply chain risk management standards, guidelines, and practices for executive agencies to use when assessing and developing mitigation strategies to address supply chain risks, particularly in the acquisition and use of covered articles under section 1326(a) of this title.

(2) Identifying or developing criteria for sharing information with executive agencies, other Federal entities, and non-Federal entities with respect to supply chain risk, including information related to the exercise of authorities provided under this section and sections 1326 and 4713 of this title. At a minimum, such criteria shall address—

(A) the content to be shared;

(B) the circumstances under which sharing is mandated or voluntary; and

(C) the circumstances under which it is appropriate for an executive agency to rely on information made available through such sharing in exercising the responsibilities and authorities provided under this section and section 4713 of this title.

(3) Identifying an appropriate executive agency to—

(A) accept information submitted by executive agencies based on the criteria established under paragraph (2);

(B) facilitate the sharing of information received under subparagraph (A) to support supply chain risk analyses under section 1326 of this title, recommendations under this

section, and covered procurement actions under section 4713 of this title;

(C) share with the Council information regarding covered procurement actions by executive agencies taken under section 4713 of this title; and

(D) inform the Council of orders issued under this section.

(4) Identifying, as appropriate, executive agencies to provide—

(A) shared services, such as support for making risk assessments, validation of products that may be suitable for acquisition, and mitigation activities; and

(B) common contract solutions to support supply chain risk management activities, such as subscription services or machine-learning-enhanced analysis applications to support informed decision making.

(5) Identifying and issuing guidance on additional steps that may be necessary to address supply chain risks arising in the course of executive agencies providing shared services, common contract solutions, acquisitions vehicles, or assisted acquisitions.

(6) Engaging with the private sector and other nongovernmental stakeholders in performing the functions described in paragraphs (1) and (2) and on issues relating to the management of supply chain risks posed by the acquisition of covered articles.

(7) Carrying out such other actions, as determined by the Council, that are necessary to reduce the supply chain risks posed by acquisitions and use of covered articles.

(b) **PROGRAM OFFICE AND COMMITTEES.**—The Council may establish a program office and any committees, working groups, or other constituent bodies the Council deems appropriate, in its sole and unreviewable discretion, to carry out its functions.

(c) **AUTHORITY FOR EXCLUSION OR REMOVAL ORDERS.**—

(1) **CRITERIA.**—To reduce supply chain risk, the Council shall establish criteria and procedures for—

(A) recommending orders applicable to executive agencies requiring the exclusion of sources or covered articles from executive agency procurement actions (in this section referred to as “exclusion orders”);

(B) recommending orders applicable to executive agencies requiring the removal of covered articles from executive agency information systems (in this section referred to as “removal orders”);

(C) requesting and approving exceptions to an issued exclusion or removal order when warranted by circumstances, including alternative mitigation actions or other findings relating to the national interest, including national security reviews, national security investigations, or national security agreements; and

(D) ensuring that recommended orders do not conflict with standards and guidelines issued under section 11331 of title 40 and that the Council consults with the Director of the National Institute of Standards and Technology regarding any recommended orders

that would implement standards and guidelines developed by the National Institute of Standards and Technology.

(2) **RECOMMENDATIONS.**—The Council shall use the criteria established under paragraph (1), information made available under subsection (a)(3), and any other information the Council determines appropriate to issue recommendations, for application to executive agencies or any subset thereof, regarding the exclusion of sources or covered articles from any executive agency procurement action, including source selection and consent for a contractor to subcontract, or the removal of covered articles from executive agency information systems. Such recommendations shall include—

(A) information necessary to positively identify the sources or covered articles recommended for exclusion or removal;

(B) information regarding the scope and applicability of the recommended exclusion or removal order;

(C) a summary of any risk assessment reviewed or conducted in support of the recommended exclusion or removal order;

(D) a summary of the basis for the recommendation, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk;

(E) a description of the actions necessary to implement the recommended exclusion or removal order; and

(F) where practicable, in the Council's sole and unreviewable discretion, a description of mitigation steps that could be taken by the source that may result in the Council rescinding a recommendation.

(3) **NOTICE OF RECOMMENDATION AND REVIEW.**—A notice of the Council's recommendation under paragraph (2) shall be issued to any source named in the recommendation advising—

(A) that a recommendation has been made;

(B) of the criteria the Council relied upon under paragraph (1) and, to the extent consistent with national security and law enforcement interests, of information that forms the basis for the recommendation;

(C) that, within 30 days after receipt of notice, the source may submit information and argument in opposition to the recommendation;

(D) of the procedures governing the review and possible issuance of an exclusion or removal order pursuant to paragraph (5); and

(E) where practicable, in the Council's sole and unreviewable discretion, a description of mitigation steps that could be taken by the source that may result in the Council rescinding the recommendation.

(4) **CONFIDENTIALITY.**—Any notice issued to a source under paragraph (3) shall be kept confidential until—

(A) an exclusion or removal order is issued pursuant to paragraph (5); and

(B) the source has been notified pursuant to paragraph (6).

(5) **EXCLUSION AND REMOVAL ORDERS.**—

(A) **ORDER ISSUANCE.**—Recommendations of the Council under paragraph (2), together with any information submitted by a source under paragraph (3) related to such a recommendation, shall be reviewed by the following officials, who may issue exclusion and removal orders based upon such recommendations:

(i) The Secretary of Homeland Security, for exclusion and removal orders applicable to civilian agencies, to the extent not covered by clause (ii) or (iii).

(ii) The Secretary of Defense, for exclusion and removal orders applicable to the Department of Defense and national security systems other than sensitive compartmented information systems.

(iii) The Director of National Intelligence, for exclusion and removal orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by clause (ii).

(B) **DELEGATION.**—The officials identified in subparagraph (A) may not delegate any authority under this subparagraph to an official below the level one level below the Deputy Secretary or Principal Deputy Director, except that the Secretary of Defense may delegate authority for removal orders to the Commander of the United States Cyber Command, who may not redelegate such authority to an official below the level one level below the Deputy Commander.

(C) **FACILITATION OF EXCLUSION ORDERS.**—If officials identified under this paragraph from the Department of Homeland Security, the Department of Defense, and the Office of the Director of National Intelligence issue orders collectively resulting in a governmentwide exclusion, the Administrator for General Services and officials at other executive agencies responsible for management of the Federal Supply Schedules, governmentwide acquisition contracts and multi-agency contracts shall help facilitate implementation of such orders by removing the covered articles or sources identified in the orders from such contracts.

(D) **REVIEW OF EXCLUSION AND REMOVAL ORDERS.**—The officials identified under this paragraph shall review all exclusion and removal orders issued under subparagraph (A) not less frequently than annually pursuant to procedures established by the Council.

(E) **RESCISSION.**—Orders issued pursuant to subparagraph (A) may be rescinded by an authorized official from the relevant issuing agency.

(6) **NOTIFICATIONS.**—Upon issuance of an exclusion or removal order pursuant to paragraph (5)(A), the official identified under that paragraph who issued the order shall—

(A) notify any source named in the order of—

(i) the exclusion or removal order; and

(ii) to the extent consistent with national security and law enforcement interests, information that forms the basis for the order;

(B) provide classified or unclassified notice of the exclusion or removal order to the appropriate congressional committees and leadership; and

(C) provide the exclusion or removal order to the agency identified in subsection (a)(3).

(7) COMPLIANCE.—Executive agencies shall comply with exclusion and removal orders issued pursuant to paragraph (5).

(d) AUTHORITY TO REQUEST INFORMATION.—The Council may request such information from executive agencies as is necessary for the Council to carry out its functions.

(e) RELATIONSHIP TO OTHER COUNCILS.—The Council shall consult and coordinate, as appropriate, with other relevant councils and inter-agency committees, including the Chief Information Officers Council, the Chief Acquisition Officers Council, the Federal Acquisition Regulatory Council, and the Committee on Foreign Investment in the United States, with respect to supply chain risks posed by the acquisition and use of covered articles.

(f) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to limit the authority of the Office of Federal Procurement Policy to carry out the responsibilities of that Office under any other provision of law; or

(2) to authorize the issuance of an exclusion or removal order based solely on the fact of foreign ownership of a potential procurement source that is otherwise qualified to enter into procurement contracts with the Federal Government.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5180.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

§ 1324. Strategic plan

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, the Council shall develop a strategic plan for addressing supply chain risks posed by the acquisition of covered articles and for managing such risks that includes—

(1) the criteria and processes required under section 1323(a) of this title, including a threshold and requirements for sharing relevant information about such risks with all executive agencies and, as appropriate, with other Federal entities and non-Federal entities;

(2) an identification of existing authorities for addressing such risks;

(3) an identification and promulgation of best practices and procedures and available resources for executive agencies to assess and mitigate such risks;

(4) recommendations for any legislative, regulatory, or other policy changes to improve efforts to address such risks;

(5) recommendations for any legislative, regulatory, or other policy changes to incentivize the adoption of best practices for supply chain risk management by the private sector;

(6) an evaluation of the effect of implementing new policies or procedures on existing contracts and the procurement process;

(7) a plan for engaging with executive agencies, the private sector, and other nongovernmental stakeholders to address such risks;

(8) a plan for identification, assessment, mitigation, and vetting of supply chain risks from existing and prospective information and communications technology made available by executive agencies to other executive agencies through common contract solutions, shared services, acquisition vehicles, or other assisted acquisition services; and

(9) plans to strengthen the capacity of all executive agencies to conduct assessments of—

(A) the supply chain risk posed by the acquisition of covered articles; and

(B) compliance with the requirements of this subchapter.

(b) SUBMISSION TO CONGRESS.—Not later than 7 calendar days after completion of the strategic plan required by subsection (a), the Chairperson of the Council shall submit the plan to the appropriate congressional committees and leadership.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5184.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, referred to in subsec. (a), is the date of enactment of Pub. L. 115-390, which was approved Dec. 21, 2018.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

§ 1325. Annual report

Not later than December 31 of each year, the Chairperson of the Council shall submit to the appropriate congressional committees and leadership a report on the activities of the Council during the preceding 12-month period.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5184.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

§ 1326. Requirements for executive agencies

(a) IN GENERAL.—The head of each executive agency shall be responsible for—

(1) assessing the supply chain risk posed by the acquisition and use of covered articles and avoiding, mitigating, accepting, or transferring that risk, as appropriate and consistent with the standards, guidelines, and practices identified by the Council under section 1323(a)(1); and

(2) prioritizing supply chain risk assessments conducted under paragraph (1) based on the criticality of the mission, system, component, service, or asset.

(b) INCLUSIONS.—The responsibility for assessing supply chain risk described in subsection (a) includes—

(1) developing an overall supply chain risk management strategy and implementation plan and policies and processes to guide and govern supply chain risk management activities;

(2) integrating supply chain risk management practices throughout the life cycle of the system, component, service, or asset;

(3) limiting, avoiding, mitigating, accepting, or transferring any identified risk;

(4) sharing relevant information with other executive agencies as determined appropriate by the Council in a manner consistent with section 1323(a) of this title;

(5) reporting on progress and effectiveness of the agency's supply chain risk management consistent with guidance issued by the Office of Management and Budget and the Council; and

(6) ensuring that all relevant information, including classified information, with respect to acquisitions of covered articles that may pose a supply chain risk, consistent with section 1323(a) of this title, is incorporated into existing processes of the agency for conducting assessments described in subsection (a) and ongoing management of acquisition programs, including any identification, investigation, mitigation, or remediation needs.

(c) INTERAGENCY ACQUISITIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), in the case of an interagency acquisition, subsection (a) shall be carried out by the head of the executive agency whose funds are being used to procure the covered article.

(2) ASSISTED ACQUISITIONS.—In an assisted acquisition, the parties to the acquisition shall determine, as part of the interagency agreement governing the acquisition, which agency is responsible for carrying out subsection (a).

(3) DEFINITIONS.—In this subsection, the terms “assisted acquisition” and “interagency acquisition” have the meanings given those terms in section 2.101 of title 48, Code of Federal Regulations (or any corresponding similar regulation or ruling).

(d) ASSISTANCE.—The Secretary of Homeland Security may—

(1) assist executive agencies in conducting risk assessments described in subsection (a) and implementing mitigation requirements for

information and communications technology; and

(2) provide such additional guidance or tools as are necessary to support actions taken by executive agencies.

(Added Pub. L. 115–390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5184.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115–390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115–390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115–390, set out as a note under section 1321 of this title.

§ 1327. Judicial review procedures

(a) IN GENERAL.—Except as provided in subsection (b) and chapter 71 of this title, and notwithstanding any other provision of law, an action taken under section 1323 or 4713 of this title, or any action taken by an executive agency to implement such an action, shall not be subject to administrative review or judicial review, including bid protests before the Government Accountability Office or in any Federal court.

(b) PETITIONS.—

(1) IN GENERAL.—Not later than 60 days after a party is notified of an exclusion or removal order under section 1323(c)(6) of this title or a covered procurement action under section 4713 of this title, the party may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit claiming that the issuance of the exclusion or removal order or covered procurement action is unlawful.

(2) STANDARD OF REVIEW.—The Court shall hold unlawful a covered action taken under sections 1323 or 4713 of this title, in response to a petition that the court finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (3); or

(E) not in accord with procedures required by law.

(3) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over claims arising under sections 1323(c)(5) or 4713 of this title against the United States, any United States department or agency, or any component or official of any such department or agency, subject to review by the Supreme Court of the United States under section 1254 of title 28.

(4) ADMINISTRATIVE RECORD AND PROCEDURES.—

(A) IN GENERAL.—The procedures described in this paragraph shall apply to the review of a petition under this section.

(B) ADMINISTRATIVE RECORD.—

(i) FILING OF RECORD.—The United States shall file with the court an administrative record, which shall consist of the information that the appropriate official relied upon in issuing an exclusion or removal order under section 1323(c)(5) or a covered procurement action under section 4713 of this title.

(ii) UNCLASSIFIED, NONPRIVILEGED INFORMATION.—All unclassified information contained in the administrative record that is not otherwise privileged or subject to statutory protections shall be provided to the petitioner with appropriate protections for any privileged or confidential trade secrets and commercial or financial information.

(iii) IN CAMERA AND EX PARTE.—The following information may be included in the administrative record and shall be submitted only to the court ex parte and in camera:

(I) Classified information.

(II) Sensitive security information, as defined by section 1520.5 of title 49, Code of Federal Regulations.

(III) Privileged law enforcement information.

(IV) Information obtained or derived from any activity authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), except that, with respect to such information, subsections (c), (e), (f), (g), and (h) of section 106 (50 U.S.C. 1806), subsections (d), (f), (g), (h), and (i) of section 305 (50 U.S.C. 1825), subsections (c), (e), (f), (g), and (h) of section 405 (50 U.S.C. 1845), and section 706 (50 U.S.C. 1881e) of that Act shall not apply.

(V) Information subject to privilege or protections under any other provision of law.

(iv) UNDER SEAL.—Any information that is part of the administrative record filed ex parte and in camera under clause (iii), or cited by the court in any decision, shall be treated by the court consistent with the provisions of this subparagraph and shall remain under seal and preserved in the records of the court to be made available consistent with the above provisions in the event of further proceedings. In no event shall such information be released to the petitioner or as part of the public record.

(v) RETURN.—After the expiration of the time to seek further review, or the conclusion of further proceedings, the court shall return the administrative record, including any and all copies, to the United States.

(C) EXCLUSIVE REMEDY.—A determination by the court under this subsection shall be the exclusive judicial remedy for any claim described in this section against the United States, any United States department or agency, or any component or official of any such department or agency.

(D) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting, superseding, or preventing the invocation of, any privileges or defenses that are otherwise available at law or in equity to protect against the disclosure of information.

(c) DEFINITION.—In this section, the term “classified information”—

(1) has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.); and

(2) includes—

(A) any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation to require protection against unauthorized disclosure for reasons of national security; and

(B) any restricted data, as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5185.)

Editorial Notes

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (b)(4)(B)(iii)(IV), is Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to chapter 36 (§1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

The Classified Information Procedures Act, referred to in subsec. (c)(1), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

§ 1328. Termination

This subchapter shall terminate on December 31, 2033.

(Added Pub. L. 115-390, title II, §202(a), Dec. 21, 2018, 132 Stat. 5188; amended Pub. L. 117-263, div. E, title LIX, §5949(k)(1), Dec. 23, 2022, 136 Stat. 3492.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-263 substituted “December 31, 2033” for “the date that is 5 years after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Dec. 21, 2018, and applicable to contracts that are awarded before, on, or after that date, see section 202(c) of Pub. L. 115-390, set out as a note under section 1321 of this title.

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

CHAPTER 15—COST ACCOUNTING STANDARDS

Sec.	
1501.	Cost Accounting Standards Board.
1502.	Cost accounting standards.
1503.	Contract price adjustment.
1504.	Effect on other standards and regulations.
1505.	Examinations.
1506.	Authorization of appropriations.

§ 1501. Cost Accounting Standards Board

(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(b) MEMBERSHIP.—

(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

(A) 2 representatives of the Federal Government—

(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and

(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.

(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—

(i) one of whom is a representative of industry; and

(ii) one of whom is particularly knowledgeable about cost accounting problems and systems and, if possible, is a representative of a public accounting firm.

(2) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING AGENCY.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(c) DUTIES.—The Board shall—

(1) ensure that the cost accounting standards used by Federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems;

(2) within one year after the date of enactment of this subsection, and on an ongoing basis thereafter, review any cost accounting standards established under section 1502 of this title and conform such standards, where practicable, to Generally Accepted Accounting Principles; and

(3) annually review disputes involving such standards brought to the boards established in section 7105 of this title or Federal courts, and consider whether greater clarity in such standards could avoid such disputes.

(d) MEETINGS.—The Board shall meet not less than once each quarter and shall publish in the Federal Register notice of each meeting and its agenda before such meeting is held.

(e) REPORT.—The Board shall annually submit a report to the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate describing the actions taken during the prior year—

(1) to conform the cost accounting standards established under section 1502 of this title with Generally Accepted Accounting Principles; and

(2) to minimize the burden on contractors while protecting the interests of the Federal Government.

(f) SENIOR STAFF.—The Administrator, after consultation with the Board—

(1) without regard to the provisions of title 5 governing appointments in the competitive service—

(A) shall appoint an executive secretary; and

(B) may appoint, or detail pursuant to section 3341 of title 5, two additional staff members; and

(2) may pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.

(g) OTHER STAFF.—The Administrator may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(h) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the Administrator, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(i) COMPENSATION.—

(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under sub-

section (h)(1), shall not receive additional compensation for services but shall continue to be compensated by the employing department or agency of the officer or employee.

(2) **APPOINTEES FROM PRIVATE SECTOR.**—Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board.

(3) **TEMPORARY AND INTERMITTENT PERSONNEL.**—An individual hired under subsection (h)(2) may receive compensation at a rate fixed by the Administrator, but not to exceed the daily equivalent of the rate for level V of the Executive Schedule for each day (including travel time) in which the individual is properly engaged in the actual performance of duties under this chapter.

(4) **TRAVEL EXPENSES.**—While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis under this chapter shall be allowed travel expenses in accordance with section 5703 of title 5.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3695; Pub. L. 114–328, div. A, title VIII, § 820(a)(1), (3), Dec. 23, 2016, 130 Stat. 2273, 2274.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1501(a)	41:422(a)(1) (1st sentence).	Pub. L. 93–400, § 26(a)–(e), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4058.
1501(b)	41:422(a)(1) (last sentence), (2).	
1501(c)	41:422(b).	
1501(d)	41:422(c).	
1501(e)	41:422(d).	
1501(f)	41:422(e).	

In subsection (b)(2), the text of 41:422(a)(2)(C) is omitted as obsolete.

In subsection (b)(2)(A), the last sentence is substituted for “of the initial members, two shall be appointed for terms of two years, one shall be appointed for a term of three years, and one shall be appointed for a term of four years” because the initial members have already been appointed.

In subsection (c)(2), the reference to section 5376 of title 5 is substituted for the reference to grade GS–18 of the General Schedule because of section 529 [title I, § 101(c)(1)] of the Treasury, Postal Service, and General Government Appropriations Act, 1991 (Public Law 101–509, 104 Stat. 1442, 5:5376 note).

In subsection (f)(1), the words “Except as otherwise provided in subsection (a) of this section” are omitted because 41:422(a) does not provide any relevant exception.

In subsection (f)(2), the words “private sector” are substituted for “private life” for consistency with subsection (b)(1)(B) of the revised section.

In subsection (f)(3), the words “Executive Schedule” are substituted for “Federal Executive Salary Schedule under section 5316 of title 5” for consistency and to eliminate unnecessary words.

SENATE REVISION AMENDMENT

In subsec. (c)(2), “for level IV of the Executive Schedule” substituted for “under section 5376 of title 5” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

Level IV of the Executive Schedule, referred to in subsec. (f)(2), is set out under section 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

2016—Subsec. (b)(1)(B)(ii). Pub. L. 114–328, § 820(a)(1)(A), inserted “and, if possible, is a representative of a public accounting firm” after “systems”.

Subsecs. (c) to (e). Pub. L. 114–328, § 820(a)(1)(C), added subsecs. (c) to (e). Former subsecs. (c) to (e) redesignated (f) to (h), respectively.

Subsec. (f). Pub. L. 114–328, § 820(a)(1)(B), (D), redesignated subsec. (c) as (f) and amended it generally. Prior to amendment, text read as follows: “The Administrator, after consultation with the Board, may—

“(1) appoint an executive secretary and 2 additional staff members without regard to the provisions of title 5 governing appointments in the competitive service; and

“(2) pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.”

Subsecs. (g) to (i). Pub. L. 114–328, § 820(a)(1)(B), redesignated subsecs. (d) to (f) as (g) to (i), respectively.

Subsec. (i)(1). Pub. L. 114–328, § 820(a)(3)(A), substituted “subsection (h)(1)” for “subsection (e)(1)”.

Subsec. (i)(3). Pub. L. 114–328, § 820(a)(3)(B), substituted “subsection (h)(2)” for “subsection (e)(2)”.

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.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, § 820(d), Dec. 23, 2016, 130 Stat. 2276, provided that: “The amendments made by this section [enacting section 190 of Title 10, Armed Forces, and amending this section and section 1502 of this title] shall take effect on October 1, 2018.”

§ 1502. Cost accounting standards

(a) AUTHORITY.—

(1) **COST ACCOUNTING STANDARDS BOARD.**—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) **ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.**—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter. The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONTRACT.—

(A) DEFINITION.—In this paragraph, the term “subcontract” includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 3702(a)(1)(A) of title 10 as the amount is adjusted in accordance with applicable requirements of law.

(C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial product or commercial service;

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;

(iii) a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or

(iv) a contract or subcontract with a value of less than \$7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than \$7,500,000 that is covered by the standards.

(2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than \$100,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial products or commercial services; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set

forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.—The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3)(A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) **ACCOMPANYING MATERIAL.**—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) **IMPLEMENTING REGULATIONS.**—The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—

(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) **NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.**—Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3696; Pub. L. 114–328, div. A, title VIII, § 820(a)(2), Dec. 23, 2016, 130 Stat. 2274; Pub. L. 115–232, div. A, title VIII, § 836(b)(1), Aug. 13, 2018, 132 Stat. 1860; Pub. L. 117–81, div. A, title XVII, § 1702(h)(3), 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>
1502(a)	41:422(f)(1), (3).	Pub. L. 93–400, § 26(f), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4060; Pub. L. 103–355, title II, § 2453, title VIII, § 8301(d), Oct. 13, 1994, 108 Stat. 3326, 3397; Pub. L. 104–106, title XLII, § 4205, title XLIII, § 4321(h)(4), Feb. 10, 1996, 110 Stat. 656, 675; Pub. L. 106–65, title VIII, § 802(a), (b), Oct. 5, 1999, 113 Stat. 701; Pub. L. 109–163, div. A, title VIII, § 822, Jan. 6, 2006, 119 Stat. 3386.
1502(b)(1)	41:422(f)(2), (4).	
1502(b)(2)	41:422(f)(4).	
1502(b)(3)	41:422(f)(5).	
1502(c)	41:422(g)(1).	Pub. L. 93–400, § 26(g), (h)(1), as added Pub. L. 100–679, § 5(a), Nov. 17, 1988, 102 Stat. 4061.
1502(d)	41:422(g)(2) (1st, 2d sentences).	
1502(e)	41:422(g)(2) (last sentence).	
1502(f)	41:422(h)(1).	
1502(g)	41:422(g)(3).	

In subsection (a)(1), the word “make” is omitted as being included in “prescribe”.

In subsection (b)(2)(A), the word “categories” is omitted as being included in “classes”.

In subsection (b)(3)(A)(ii), the words “as in effect on or after the effective date of this paragraph” are omitted as obsolete.

Editorial Notes

AMENDMENTS

2021—Subsec. (b)(1)(B). Pub. L. 117–81 substituted “section 3702(a)(1)(A)” for “section 2306a(a)(1)(A)(i)”.

2018—Subsec. (b)(1)(A). Pub. L. 115–232, § 836(b)(1)(A), substituted “commercial products or commercial services” for “commercial items”.

Subsec. (b)(1)(C)(i). Pub. L. 115–232, § 836(b)(1)(B), substituted “commercial product or commercial service” for “commercial item”.

Subsec. (b)(3)(A)(i). Pub. L. 115–232, § 836(b)(1)(C), substituted “commercial products or commercial services” for “commercial items”.

2016—Subsec. (b)(3)(A). Pub. L. 114–328 substituted “\$100,000,000” for “\$15,000,000” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

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

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective Oct. 1, 2018, see section 820(d) of Pub. L. 114–328, set out as a note under section 1501 of this title.

EFFECTIVE DATE OF AMENDMENT BY PUB. L. 106–65; REGULATIONS; IMPLEMENTATION; CONSTRUCTION

Pub. L. 106–65, div. A, title VIII, § 802(c)–(e), (g)–(i), Oct. 5, 1999, 113 Stat. 701, 702, provided that:

“(c) **REGULATION ON TYPES OF CAS COVERAGE.**—(1) The Administrator for Federal Procurement Policy shall revise the rules and procedures prescribed pursuant to section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)] to the extent necessary to increase the thresholds established in section 9903.201–2 of title 48 of the Code of Federal Regulations from \$25,000,000 to \$50,000,000.

“(2) Paragraph (1) requires only a change of the statement of a threshold condition in the regulation referred to by section number in that paragraph, and shall not be construed as—

“(A) a ratification or expression of approval of—

“(i) any aspect of the regulation; or

“(ii) the manner in which section 26 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1501 et seq.] is administered through the regulation; or

“(B) a requirement to apply the regulation.

“(d) **IMPLEMENTATION.**—The Administrator for Federal Procurement Policy shall ensure that this section [see Tables for classification] and the amendments made by this section are implemented in a manner that ensures that the Federal Government can recover costs, as appropriate, in a case in which noncompliance with cost accounting standards, or a change in the cost accounting system of a contractor segment or subcontractor segment that is not determined to be desirable by the Federal Government, results in a shift of costs from contracts that are not covered by the cost accounting standards to contracts that are covered by the cost accounting standards.

“(e) **IMPLEMENTATION OF REQUIREMENTS FOR REVISION OF REGULATIONS.**—(1) Final regulations required by subsection (c) shall be issued not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].

“(2) Subsection (c) shall cease to be effective one year after the date on which final regulations issued in accordance with that subsection take effect.

“(g) **INAPPLICABILITY OF STANDARDS TO CERTAIN CONTRACTS.**—The cost accounting standards issued pursuant to section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], as amended by this section, shall not apply during fiscal year 2000 with respect to a contract entered into under the authority provided in chapter 89 of title 5, United States Code (relating to health benefits for Federal employees).

“(h) CONSTRUCTION REGARDING CERTAIN NOT-FOR-PROFIT ENTITIES.—The amendments made by subsections (a) and (b) [see Tables for classification] shall not be construed as modifying or superseding, nor as intended to impair or restrict, the applicability of the cost accounting standards described in section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)] to—

“(1) any educational institution or federally funded research and development center that is associated with an educational institution in accordance with Office of Management and Budget Circular A-21, as in effect on January 1, 1999; or

“(2) any contract with a nonprofit entity that provides research and development and related products or services to the Department of Defense.

“(i) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) [see Tables for classification] shall take effect 180 days after the date of enactment of this Act [Oct. 5, 1999], and shall apply with respect to—

“(1) contracts that are entered into on or after such effective date; and

“(2) determinations made on or after such effective date regarding whether a segment of a contractor or subcontractor is subject to the cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], regardless of whether the contracts on which such determinations are made were entered into before, on, or after such date.”

§ 1503. Contract price adjustment

(a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under chapter 71 of this title.

(b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under section 1502(f)(2) of this title shall be made, where applicable, on relevant contracts between the Federal Government and the contractor that are subject to the cost accounting standards so as to protect the Federal Government from payment, in the aggregate, of increased costs, as defined by the Cost Accounting Standards Board. The Federal Government may not recover costs greater than the aggregate increased cost to the Federal Government, as defined by the Board, on the relevant contracts subject to the price adjustment unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Federal Government.

(c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased costs were made to the contractor or subcontractor to the time the Federal Government receives full compensation for the price adjustment.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3699.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1503(a)	41:422(h)(2).	Pub. L. 93-400, §26(h)(2)-(4), as added Pub. L. 100-679, §5(a), Nov. 17, 1988, 102 Stat. 4062.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1503(b)	41:422(h)(3).	
1503(c)	41:422(h)(4).	

§ 1504. Effect on other standards and regulations

(a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations prescribed by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)—¹

(1) remain in effect until amended, superseded, or rescinded by the Board under this chapter; and

(2) are subject to the provisions of this division in the same manner as if prescribed by the Board under this division.

(b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation or proposed regulation of an executive agency is not inconsistent with a cost accounting standard prescribed or amended under this chapter, the Administrator, under the authority in sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, shall rescind or deny the promulgation of the inconsistent regulation or proposed regulation and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305.

(c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are the subject of cost accounting standards prescribed under this chapter are not subject to regulations established by another executive agency that differ from those standards with respect to the measurement, assignment, and allocation of those costs.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3699.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1504(a)	41:422(j)(1), (2).	Pub. L. 93-400, §26(j), as added Pub. L. 100-679, §5(a), Nov. 17, 1988, 102 Stat. 4062.
1504(b)	41:422(j)(3).	
1504(c)	41:422(j)(4).	

Editorial Notes

REFERENCES IN TEXT

Section 719 of the Defense Production Act of 1950, referred to in subsec. (a), is section 719 of act Sept. 8, 1950, ch. 932, title VII, as added Pub. L. 91-379, title I, §103, Aug. 15, 1970, 84 Stat. 796, which was classified to section 2168 of the former Appendix to Title 50, War and National Defense, prior to repeal by Pub. L. 100-679, §5(b), Nov. 17, 1988, 102 Stat. 4063.

§ 1505. Examinations

To determine whether a contractor or subcontractor has complied with cost accounting standards prescribed under this chapter and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, an authorized representative of the head of the agency concerned, of the offices of inspector

¹ See References in Text note below.

general established under chapter 4 of title 5, or of the Comptroller General shall have the right to examine and copy documents, papers, or records of the contractor or subcontractor relating to compliance with the standards.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3700; Pub. L. 117-286, § 4(b)(71), Dec. 27, 2022, 136 Stat. 4350.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1505	41:422(k).	Pub. L. 93-400, § 26(k), as added Pub. L. 100-679, § 5(a), Nov. 17, 1988, 102 Stat. 4062.

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-286 substituted “chapter 4 of title 5,” for “the Inspector General Act of 1978 (5 U.S.C. App.),”.

§ 1506. Authorization of appropriations

Necessary amounts may be appropriated to carry out this chapter.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3700.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1506	41:422(l).	Pub. L. 93-400, § 26(l), as added Pub. L. 100-679, § 5(a), Nov. 17, 1988, 102 Stat. 4063.

CHAPTER 17—AGENCY RESPONSIBILITIES AND PROCEDURES

<i>Sec.</i>	
1701.	Cooperation with the Administrator.
1702.	Chief Acquisition Officers and senior procurement executives.
1703.	Acquisition workforce.
1704.	Planning and policy-making for acquisition workforce.
1705.	Advocates for competition.
1706.	Personnel evaluation.
1707.	Publication of proposed regulations.
1708.	Procurement notice.
1709.	Contracting functions performed by Federal personnel.
1710.	Public-private competition required before conversion to contractor performance.
1711.	Value engineering.
1712.	Record requirements.
1713.	Procurement data.

§ 1701. Cooperation with the Administrator

On the request of the Administrator, each executive agency shall—

(1) make its services, personnel, and facilities available to the Office of Federal Procurement Policy to the greatest practicable extent for the performance of functions under this division; and

(2) except when prohibited by law, furnish to the Administrator, and give the Administrator access to, all information and records in its possession that the Administrator may determine to be necessary for the performance of the functions of the Office.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3700.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1701	41:406.	Pub. L. 93-400, § 7, Aug. 30, 1974, 88 Stat. 798.

Executive Documents

EX. ORD. NO. 12073. FEDERAL PROCUREMENT IN LABOR SURPLUS AREAS

Ex. Ord. No. 12073, Aug. 16, 1978, 43 F.R. 36873, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

1-1. PROCUREMENTS IN LABOR SURPLUS AREAS

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95-89 (15 U.S.C. 644).

1-2. ADMINISTRATOR OF GENERAL SERVICES

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.

1-204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

1-3. AGENCY RESPONSIBILITIES

1-301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1-302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1-303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.

JIMMY CARTER.

EX. ORD. NO. 12931. FEDERAL PROCUREMENT REFORM

Ex. Ord. No. 12931, Oct. 13, 1994, 59 F.R. 52387, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement, it is hereby ordered as follows:

SECTION 1. To make procurement more effective in support of mission accomplishment and consistent with recommendations of the National Performance Review, heads of executive agencies engaged in the procurement of supplies and services shall:

(a) Review agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures over and above those required by statute, and, where practicable, replace them with guiding principles that encourage and reward innovation;

(b) Review existing and planned agency programs to assure that such programs meet agency mission needs;

(c) Ensure that procurement organizations focus on measurable results and on increased attention to understanding and meeting customer needs;

(d) Increase the use of commercially available items where practicable, place more emphasis on past contractor performance, and promote best value rather than simply low cost in selecting sources for supplies and services;

(e) Ensure that simplified acquisition procedures are used, to the maximum extent practicable, for procurements under the simplified acquisition threshold in order to reduce administrative burdens and more effectively support the accomplishment of agency missions;

(f) Expand the use of the Government purchase card by the agency and take maximum advantage of the micro-purchase authority provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Short Title of 1994 Act note set out under section 101 of this title] by delegating the authority, to the maximum extent practicable, to the offices that will be using the supplies or services to be purchased;

(g) Establish clear lines of contracting authority and accountability;

(h) Establish career education programs for procurement professionals, including requirements for successful completion of educational requirements or mandatory training for entry level positions and for promotion to higher level positions, in order to ensure a highly qualified procurement work force;

(i) Designate a Procurement Executive with agency-wide responsibility to oversee development of procurement goals, guidelines, and innovation, measure and evaluate procurement office performance against stated goals, enhance career development of the procurement work force, and advise the agency heads whether goals are being achieved; and

(j) Review existing and planned information technology acquisitions and contracts to ensure that the agency receives the best value with regard to price and technology, and consider alternatives in cases where best value is not being obtained.

SEC. 2. The Director of the Office of Personnel Management, in consultation with the heads of executive agencies, shall ensure that personnel policies and classification standards meet the needs of executive agencies for a professional procurement work force.

SEC. 3. The Administrator of the Office of Federal Procurement Policy, after consultation with the Director of the Office of Management and Budget, shall work jointly with the heads of executive agencies to provide broad policy guidance and overall leadership necessary to achieve procurement reform, including, but not limited to:

(a) Coordinating Government-wide efforts;

(b) Assisting executive agencies in streamlining guidance for procurement processes;

(c) Identifying desirable Government-wide procurement system criteria; and

(d) Identifying major inconsistencies in law and policies relating to procurement that impose unnecessary burdens on the private sector and Federal procurement officials, and, following coordination with executive agencies, submitting necessary legislative initiatives to the Office of Management and Budget for the resolution of such inconsistencies.

SEC. 4. Executive Order No. 12352 is revoked.

WILLIAM J. CLINTON.

§ 1702. Chief Acquisition Officers and senior procurement executives

(a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or designated under section 901(a) of title 31 shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency.

(b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

(1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Officer is acquisition management.

(2) ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(3) OTHER FUNCTIONS.—The functions of each Chief Acquisition Officer include—

(A) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(B) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

(C) increasing appropriate use of performance-based contracting and performance specifications;

(D) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;

(E) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;

(F) advising the executive agency on the applicability of relevant policy on the contracts of the agency for overseas contingency operations and ensuring the compliance of the contracts and contracting activities of the agency with such policy;

(G) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

(H) as part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections

1105(a)(28), 1115, 1116, and 9703 (added by section 5(a) of Public Law 103-62 (107 Stat. 289)) of title 31—

(i) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management;

(ii) developing strategies and specific plans for hiring, training, and professional development to rectify a deficiency in meeting those requirements; and

(iii) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

(c) SENIOR PROCUREMENT EXECUTIVE.—

(1) DESIGNATION.—The head of each executive agency shall designate a senior procurement executive.

(2) RESPONSIBILITY.—The senior procurement executive is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

(3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DESIGNATED.—For an executive agency for which a Chief Acquisition Officer has been appointed or designated under subsection (a), the head of the executive agency shall—

(A) designate the Chief Acquisition Officer as the senior procurement executive for the executive agency; or

(B) ensure that the senior procurement executive designated under paragraph (1) reports directly to the Chief Acquisition Officer without intervening authority.

(d) OVERSEAS CONTINGENCY OPERATIONS DEFINED.—In this section, the term “overseas contingency operations” means military operations outside the United States and its territories and possessions that are a contingency operation (as that term is defined in section 101(a)(13) of title 10).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3701; Pub. L. 112-239, div. A, title VIII, § 849, Jan. 2, 2013, 126 Stat. 1853.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1702(a), (b)(1), (2).	41:414(a).	Pub. L. 93-400, § 16, as added Pub. L. 98-191, § 7, Dec. 1, 1983, 97 Stat. 1330; Pub. L. 98-369, title VII, § 2732(b)(2), July 18, 1984, 98 Stat. 1199; Pub. L. 108-136, div. A, title XIV, § 1421(a)(1), Nov. 24, 2003, 117 Stat. 1666.
1702(b)(3)	41:414(b).	
1702(c)	41:414(c).	

Editorial Notes

AMENDMENTS

2013—Subsec. (b)(3)(F) to (H). Pub. L. 112-239, § 849(a), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (d). Pub. L. 112-239, § 849(b), added subsec. (d).

§ 1703. Acquisition workforce

(a) DESCRIPTION.—For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A).

(b) APPLICABILITY.—

(1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—Except as provided in subsection (i), this section does not apply to an executive agency that is subject to chapter 87 of title 10.

(2) APPLICABILITY OF PROGRAMS.—The programs established by this section apply to the acquisition workforce of each executive agency.

(c) MANAGEMENT POLICIES.—

(1) DUTIES OF HEAD OF EXECUTIVE AGENCY.—

(A) ESTABLISH POLICIES AND PROCEDURES.—After consultation with the Administrator, the head of each executive agency shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5.

(B) ENSURE UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

(2) DUTIES OF ADMINISTRATOR.—

(A) IN GENERAL.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that the policies are consistent with the policies and procedures established, and enhanced system of incentives provided, pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 108 Stat. 3351). The Administrator shall evaluate the implementation of this section by executive agencies.

(B) GOVERNMENT-WIDE TRAINING STANDARDS AND CERTIFICATION.—The Administrator, acting through the Federal Acquisition Institute, shall provide and update government-wide training standards and certification requirements, including—

(i) developing and modifying acquisition certification programs;

(ii) ensuring quality assurance for agency implementation of government-wide training and certification standards;

(iii) analyzing the acquisition training curriculum to ascertain if all certification competencies are covered or if adjustments are necessary;

(iv) developing career path information for certified professionals to encourage retention in government positions;

(v) coordinating with the Office of Personnel Management for human capital efforts; and

(vi) managing rotation assignments to support opportunities to apply skills included in certification.

(d) **AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXECUTIVE.**—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementing this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

(e) **COLLECTING AND MAINTAINING INFORMATION.**—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementing this section. To the maximum extent practicable, information requirements shall conform to standards the Director of the Office of Personnel Management establishes for the Central Personnel Data File.

(f) **CAREER DEVELOPMENT.**—

(1) **CAREER PATHS.**—

(A) **IDENTIFICATION.**—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make available information on those career paths.

(B) **CRITICAL DUTIES AND TASKS.**—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

(C) **MANDATORY TRAINING AND EDUCATION.**—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency also shall encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

(2) **PERFORMANCE INCENTIVES.**—The head of each executive agency shall provide for an enhanced system of incentives to encourage excellence in the acquisition workforce that rewards performance of employees who contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

(A) relate pay to performance (including the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 3103(b) of this title); and

(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals.

(g) **QUALIFICATION REQUIREMENTS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Administrator shall—

(A) establish qualification requirements, including education requirements, for—

(i) entry-level positions in the General Schedule Contracting series (GS-1102);

(ii) senior positions in the General Schedule Contracting series (GS-1102);

(iii) all positions in the General Schedule Purchasing series (GS-1105); and

(iv) positions in other General Schedule series in which significant acquisition-related functions are performed; and

(B) prescribe the manner and extent to which the qualification requirements shall apply to an individual serving in a position described in subparagraph (A) at the time the requirements are established.

(2) **RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE ACQUISITION WORKFORCE.**—The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10 with appropriate modifications.

(3) **APPROVAL OF REQUIREMENTS.**—The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. The Director is deemed to have approved the requirement or prescription if the Director does not disapprove the requirement or prescription within 30 days after receiving it.

(h) **EDUCATION AND TRAINING.**—

(1) **FUNDING LEVELS.**—The head of an executive agency shall set forth separately the funding levels requested for educating and training the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(2) **TUITION ASSISTANCE.**—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5 for personnel serving in acquisition positions in the agency.

(3) **RESTRICTED OBLIGATION.**—Amounts appropriated for education and training under this section may not be obligated for another purpose.

(i) **TRAINING FUND.**—

(1) **PURPOSES.**—The purposes of this subsection are to ensure that the Federal acquisition workforce—

(A) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

(B) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.

(2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an acquisition workforce training fund. The Administrator of General Services shall manage the fund through the Federal Acquisition Institute to support the activities set forth in section 1201(a) of this title, except as provided in paragraph (5). The Administrator of General Services shall consult with the Administrator in managing the fund.

(3) CREDITS TO FUND.—Five percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts shall be credited to the fund:

(A) Government-wide task and delivery-order contracts entered into under sections 4103 and 4105 of this title.

(B) Government-wide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multi-agency acquisition contracts for that technology authorized by section 11314 of title 40.

(C) multiple-award schedule contracts entered into by the Administrator of General Services.

(4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency that administers a contract described in paragraph (3) shall remit to the General Services Administration the amount required to be credited to the fund with respect to the contract at the end of each quarter of the fiscal year.

(5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT OF DEFENSE.—The Administrator of General Services shall transfer to the Secretary of Defense fees collected from the Department of Defense pursuant to paragraph (3). The Defense Acquisition University shall use the fees for acquisition workforce training.

(6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Administrator of General Services, through the Office of Federal Procurement¹ Policy, shall ensure that amounts collected under this section are not used for a purpose other than the activities set forth in section 1201(a) of this title.

(7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDUCATION AND TRAINING.—Amounts credited to the fund are in addition to amounts requested and appropriated for education and training referred to in subsection (h)(1).

(8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund remain available to be expended only in the fiscal year for which they are credited and the 2 succeeding fiscal years.

(j) RECRUITMENT PROGRAM.—

(1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and 5753 of title 5, the head of a department or agency of the Federal Government (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in subsection (g)(1)(A)) are shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified individuals directly to those positions in the department or agency.

(2) TERMINATION OF AUTHORITY.—The head of a department or agency may not appoint an individual to a position of employment under this subsection after September 30, 2017.

(k) REEMPLOYMENT WITHOUT LOSS OF ANNUITY.—

(1) ESTABLISHMENT OF POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement and Disability Fund, on the basis of the individual's service, without discontinuing the annuity. The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

(2) CRITERIA FOR CONTINUATION OF ANNUITY.—Policies and procedures established under paragraph (1) shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if any of the following makes the reemployment of an individual essential:

(A) The unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of the individual's service.

(B) The exceptional difficulty in recruiting or retaining a qualified employee.

(C) A temporary emergency hiring need.

(3) SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual reemployed under this subsection shall not be deemed an employee for purposes of chapter 83 or 84 of title 5.

(4) REPORTING REQUIREMENT.—The Administrator shall submit annually 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 a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.

(5) SUNSET PROVISION.—The authority under this subsection expires on December 31, 2011.

(l) ACQUISITION INTERNSHIP AND TRAINING PROGRAMS.—All Federal civilian agency acquisition internship or acquisition training programs shall follow guidelines provided by the Office of Federal Procurement Policy to ensure consistent training standards necessary to develop uniform core competencies throughout the Federal Government.

¹ So in original. Probably should be "Procurement".

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3702; Pub. L. 112–74, div. C, title V, §526, Dec. 23, 2011, 125 Stat. 914; Pub. L. 112–81, div. A, title VIII, §864(c), (d), Dec. 31, 2011, 125 Stat. 1525; Pub. L. 112–239, div. A, title X, §1076(a)(15), title XI, §1103, Jan. 2, 2013, 126 Stat. 1948, 1973.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1703(a)	41:433(e) (last sentence).	Pub. L. 93–400, §37(b)–(h)(2), as added Pub. L. 104–106, title XLIII, §4307(a)(1), Feb. 10, 1996, 110 Stat. 666.
1703(b)(1)	41:433(a).	Pub. L. 93–400, §37(a), as added Pub. L. 104–106, title XLIII, §4307(a)(1), Feb. 10, 1996, 110 Stat. 666; Pub. L. 109–163, div. A, title VIII, §821(b)(1), Jan. 6, 2006, 119 Stat. 3386.
1703(b)(2)	41:433(e) (1st sentence).	
1703(c)	41:433(b).	
1703(d)	41:433(c).	
1703(e)	41:433(d).	
1703(f)	41:433(f).	
1703(g)	41:433(g).	
1703(h)(1)	41:433(h)(1)(A).	
1703(h)(2)	41:433(h)(2).	
1703(h)(3)	41:433(h)(1)(B).	
1703(i)(1)	41:433 note.	Pub. L. 108–136, div. A, title XIV, §1412(a), Nov. 24, 2003, 117 Stat. 1664.
1703(i)(2)–(8)	41:433(h)(3).	Pub. L. 93–400, §37(h)(3), as added Pub. L. 108–136, div. A, title XIV, §1412(b), Nov. 24, 2003, 117 Stat. 1664; Pub. L. 109–163, div. A, title VIII, §821(a), Jan. 6, 2006, 119 Stat. 3386; Pub. L. 110–181, div. A, title VIII, §854, Jan. 28, 2008, 122 Stat. 251.
1703(j)	41:433 note.	Pub. L. 108–136, div. A, title XIV, §1413, Nov. 24, 2003, 117 Stat. 1665; Pub. L. 110–181, div. A, title VIII, §853, title X, §1063(g)(2), Jan. 28, 2008, 122 Stat. 250, 323.
1703(k)	41:433(i).	Pub. L. 93–400, §37(i), as added Pub. L. 109–313, §4, Oct. 6, 2006, 120 Stat. 1737.

In subsection (e), the word “information” the second time it appears is substituted for “data” for consistency in the subsection.

In subsection (i)(6), the words “Office of Federal Procurement Policy” are substituted for “Office of Federal Acquisition Policy” to provide the correct name of the office.

In subsection (j), the text of 1413(c) of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, 117 Stat. 1665) is omitted as obsolete.

In subsection (k)(4), the words “Committee on Oversight and Government Reform” are substituted for “Committee 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).

Editorial Notes

REFERENCES IN TEXT

Section 5051(c) of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (c)(2)(A), is section 5051(c) of Pub. L. 103–305, which is set out as a note under this section.

AMENDMENTS

2013—Subsec. (i)(6). Pub. L. 112–239, §1076(a)(15), amended Pub. L. 112–81, §864(d)(2). See 2011 Amendment note below.

Subsec. (j)(2). Pub. L. 112–239, §1103, substituted “September 30, 2017” for “September 30, 2012”.

2011—Subsec. (c)(2). Pub. L. 112–81, §864(c)(1), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (i)(2). Pub. L. 112–81, §864(d)(1), substituted “to support the activities set forth in section 1201(a) of this title” for “to support the training of the acquisition workforce of the executive agencies”.

Subsec. (i)(6). Pub. L. 112–81, §864(d)(2), as amended by Pub. L. 112–239, §1076(a)(15), substituted “ensure that amounts collected under this section are not used for a purpose other than the activities set forth in section 1201(a) of this title.” for “ensure that amounts collected under this subsection are not used for a purpose other than the purpose specified in subparagraphs (A) and (C) to (J) of section 1122(a)(5) of this title.”

Pub. L. 112–74 struck out “for training” after “amounts collected” and substituted “subparagraphs (A) and (C) to (J) of section 1122(a)(5) of this title” for “paragraph (2)”.

Subsec. (l). Pub. L. 112–81, §864(c)(2), added subsec. (l).

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.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(15) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

ARTIFICIAL INTELLIGENCE TRAINING FOR THE ACQUISITION WORKFORCE

Pub. L. 117–207, Oct. 17, 2022, 136 Stat. 2238, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Artificial Intelligence Training for the Acquisition Workforce Act’ or the ‘AI Training Act’.

“SEC. 2. ARTIFICIAL INTELLIGENCE TRAINING PROGRAMS.

“(a) DEFINITIONS.—In this section:

“(1) AI.—The term ‘AI’ has the meaning given the term ‘artificial intelligence’ in section 238(g) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 [Pub. L. 115–232] (10 U.S.C. 2358 note [now 10 U.S.C. 4061 note prec.]).

“(2) AI TRAINING PROGRAM.—The term ‘AI training program’ means the training program established under subsection (b)(1).

“(3) COVERED WORKFORCE.—The term ‘covered workforce’ means—

“(A) employees of an executive agency who are responsible for—

“(i) program management;

“(ii) the planning, research, development, engineering, testing, and evaluation of systems, including quality control and assurance;

“(iii) procurement and contracting;

“(iv) logistics; or

“(v) cost estimating; and

“(B) other personnel of an executive agency designated by the head of the executive agency to participate in the AI training program.

“(4) DIRECTOR.—The term ‘Director’ means the Director of the Office of Management and Budget.

“(5) EXECUTIVE AGENCY.—The term ‘executive agency’—

“(A) has the meaning given the term in section 133 of title 41, United States Code; and

“(B) does not include—

“(i) the Department of Defense or a component of the Department of Defense; or

“(ii) the National Nuclear Security Administration or a component of the National Nuclear Security Administration.

“(b) REQUIREMENT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Oct. 17, 2022], and not less frequently than annually thereafter, the Director, in coordination with the Administrator of General Services and any other person determined relevant by the Director, shall develop and implement or otherwise provide an AI training program for the covered workforce.

“(2) PURPOSE.—The purpose of the AI training program shall be to ensure that the covered workforce has knowledge of the capabilities and risks associated with AI.

“(3) TOPICS.—The AI training program shall include information relating to—

“(A) the science underlying AI, including how AI works;

“(B) introductory concepts relating to the technological features of artificial intelligence systems;

“(C) the ways in which AI can benefit the Federal Government;

“(D) the risks posed by AI, including discrimination and risks to privacy;

“(E) ways to mitigate the risks described in subparagraph (D), including efforts to create and identify AI that is reliable, safe, and trustworthy; and

“(F) future trends in AI, including trends for homeland and national security and innovation.

“(4) UPDATES.—Not less frequently than once every 2 years, the Director shall update the AI training program to—

“(A) incorporate new information relating to AI; and

“(B) ensure that the AI training program continues to satisfy the requirements under paragraph (3).

“(5) FORMAT.—The Director is encouraged to develop and implement or otherwise include under the AI training program interactive learning with—

“(A) technologists;

“(B) scholars; and

“(C) other experts from the private, public, and nonprofit sectors.

“(6) METRICS.—The Director shall ensure the existence of a means by which to—

“(A) understand and measure the participation of the covered workforce; and

“(B) receive and consider feedback from participants in the AI training program to improve the AI training program.

“(7) SUNSET.—Effective 10 years after the date of enactment of this Act, this section shall have no force or effect.”

SUPPLY CHAIN SECURITY TRAINING

Pub. L. 117-145, June 16, 2022, 136 Stat. 1269, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Supply Chain Security Training Act of 2021’.

“SEC. 2. TRAINING PROGRAM TO MANAGE SUPPLY CHAIN RISK.

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [June 16, 2022], the Administrator of General Services, through the Federal Acquisition Institute, shall develop a training program for officials with supply chain risk management responsibilities at Federal agencies.

“(b) CONTENT.—The training program shall be designed to prepare such personnel to perform supply chain risk management activities and identify and mitigate supply chain security risks that arise throughout the acquisition lifecycle, including for the acquisition of information and communications technology. The training program shall—

“(1) include, considering the protection of classified and other sensitive information, information on current, specific supply chain security threats and vulnerabilities; and

“(2) be updated as determined to be necessary by the Administrator.

“(c) COORDINATION AND CONSULTATION.—In developing and determining updates to the training program, the Administrator shall—

“(1) coordinate with the Federal Acquisition Security Council, the Secretary of Homeland Security, and the Director of the Office of Personnel Management; and

“(2) consult with the Director of the Department of Defense’s Defense Acquisition University, the Director of National Intelligence, and the Director of the National Institute of Standards and Technology.

“(d) GUIDANCE.—

“(1) IN GENERAL.—Not later than 180 days after the training program is developed under subsection (a), the Director of the Office of Management and Budget shall promulgate guidance to Federal agencies requiring executive agency adoption and use of the training program. Such guidance shall—

“(A) allow executive agencies to incorporate the training program into existing agency training programs; and

“(B) provide guidance on how to identify executive agency officials with supply chain risk management responsibilities.

“(2) AVAILABILITY.—The Director of the Office of Management and Budget shall make the guidance promulgated under paragraph (1) available to Federal agencies of the legislative and judicial branches.

“SEC. 3. REPORTS ON IMPLEMENTATION OF PROGRAM.

“Not later than 180 days after the completion of the first course, and annually thereafter for the next three years, the Administrator of General Services shall submit to the appropriate congressional committees and leadership a report on implementation of the training program required under section 2.

“SEC. 4. DEFINITIONS.

“In this Act:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term ‘appropriate congressional committees’ means—

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

“(B) the Committee on Oversight and Reform and the Committee on Armed Services of the House of Representatives.

“(2) INFORMATION AND COMMUNICATIONS TECHNOLOGY.—The term ‘information and communications technology’ has the meaning given the term in section 4713(k) of title 41, United States Code.

“(3) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given the term in section 133 of title 41, United States Code.

“(4) FEDERAL AGENCY.—The term ‘Federal agency’ means any agency, committee, commission, office, or other establishment in the executive, legislative, or judicial branch of the Federal Government.

“(5) TRAINING PROGRAM.—The term ‘training program’ means the training program developed pursuant to section 2(a).”

EFFECTIVE COMMUNICATION BETWEEN GOVERNMENT AND INDUSTRY

Pub. L. 114-92, div. A, title VIII, §887, Nov. 25, 2015, 129 Stat. 949, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Federal Acquisition Regulatory Council shall prescribe a regulation making clear that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms.”

TRAINING FOR CONTRACTING AND ENFORCEMENT PERSONNEL

Pub. L. 111-240, title I, §1343(a), Sept. 27, 2010, 124 Stat. 2545, provided that: “Not later than 1 year after

the date of enactment of this Act [Sept. 27, 2010], the Federal Acquisition Institute, in consultation with the Administrator for Federal Procurement Policy, the Defense Acquisition University, and the Administrator [of the Small Business Administration], shall develop courses for acquisition personnel concerning proper classification of business concerns and small business size and status for purposes of Federal contracts, subcontracts, grants, cooperative agreements, and cooperative research and development agreements.”

DEFENSE ACQUISITION UNIVERSITY FUNDING

Pub. L. 109–163, div. A, title VIII, § 821(c), Jan. 6, 2006, 119 Stat. 3386, provided that: “Amounts transferred under section 37(h)(3)(D) of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1703(i)(5)] (as amended by subsection (a)) for use by the Defense Acquisition University shall be in addition to other amounts authorized for the University.”

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Pub. L. 103–355, title V, § 5051(c), Oct. 13, 1994, 108 Stat. 3351, provided that: “Within one year after the date of the enactment of this Act [Oct. 13, 1994], the Deputy Director for Management of the Office of Management and Budget, in consultation with appropriate officials in other departments and agencies of the Federal Government, shall, to the maximum extent consistent with applicable law—

“(1) establish policies and procedures for the heads of such departments and agencies to designate acquisition positions and manage employees (including the accession, education, training and career development of employees) in the designated acquisition positions; and

“(2) review the incentives and personnel actions available to the heads of departments and agencies of the Federal Government for encouraging excellence in the acquisition workforce of the Federal Government and provide an enhanced system of incentives for the encouragement of excellence in such workforce which—

“(A) relates pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 313(b) of the Federal Property and Administrative Services Act of 1949, as added by subsection (a) [now 41 U.S.C. 3103(b)]); and

“(B) provides for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.”

§ 1704. Planning and policy-making for acquisition workforce

(a) DEFINITIONS.—In this section:

(1) ASSOCIATE ADMINISTRATOR.—The term “Associate Administrator” means the Associate Administrator for Acquisition Workforce Programs as designated by the Administrator pursuant to subsection (b).

(2) CHIEF ACQUISITION OFFICER.—The term “Chief Acquisition Officer” means a Chief Acquisition Officer for an executive agency appointed pursuant to section 1702 of this title.

(b) ASSOCIATE ADMINISTRATOR FOR ACQUISITION WORKFORCE PROGRAMS.—The Administrator shall designate a member of the Senior Executive Service as the Associate Administrator for Acquisition Workforce Programs. The Associate Administrator shall be chosen on the basis of demonstrated knowledge and expertise in acquisition, human capital, and management. The As-

sociate Administrator shall be located in the Office of Federal Procurement Policy. The Associate Administrator shall be responsible for—

(1) supervising the acquisition workforce training fund established under section 1703(i) of this title;

(2) developing, in coordination with Chief Acquisition Officers and Chief Human Capital Officers, a strategic human capital plan for the acquisition workforce of the Federal Government;

(3) reviewing and providing input to individual agency acquisition workforce succession plans;

(4) recommending to the Administrator and other senior government officials appropriate programs, policies, and practices to increase the quantity and quality of the Federal acquisition workforce;

(5) implementing workforce programs under subsections (f) through (l) of section 1703 of this title; and

(6) carrying out other functions that the Administrator may assign.

(c) ACQUISITION AND CONTRACTING TRAINING PROGRAMS WITHIN EXECUTIVE AGENCIES.—

(1) CHIEF ACQUISITION OFFICER AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the Chief Acquisition Officer for that agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this subsection. The Chief Acquisition Officer shall ensure that the policies established by the head of the agency in accordance with this subsection are implemented throughout the agency.

(2) REQUIREMENT.—The head of each executive agency, after consultation with the Associate Administrator, shall establish and operate acquisition and contracting training programs. The programs shall—

(A) have curricula covering a broad range of acquisition and contracting disciplines corresponding to the specific acquisition and contracting needs of the agency involved;

(B) be developed and applied according to rigorous standards; and

(C) be designed to maximize efficiency, through the use of self-paced courses, online courses, on-the-job training, and the use of remote instructors, wherever those features can be applied without reducing the effectiveness of the training or negatively affecting academic standards.

(d) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote the development of performance standards for training and uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall evaluate the implementation of the provisions of subsection (c) by executive agencies.

(e) INFORMATION ON ACQUISITION AND CONTRACTING TRAINING.—The Administrator shall ensure that the heads of executive agencies col-

lect and maintain standardized information on the acquisition and contracting workforce related to the implementation of subsection (c).

(f) ACQUISITION WORKFORCE HUMAN CAPITAL SUCCESSION PLAN.—

(1) IN GENERAL.—Each Chief Acquisition Officer for an executive agency shall develop, in consultation with the Chief Human Capital Officer for the agency and the Associate Administrator, a succession plan consistent with the agency's strategic human capital plan for the recruitment, development, and retention of the agency's acquisition workforce, with a particular focus on warranted contracting officers and program managers of the agency.

(2) CONTENT OF PLAN.—The acquisition workforce succession plan shall address—

(A) recruitment goals for personnel from procurement intern programs;

(B) the agency's acquisition workforce training needs;

(C) actions to retain high performing acquisition professionals who possess critical relevant skills;

(D) recruitment goals for personnel from the Federal Career Intern Program; and

(E) recruitment goals for personnel from the Presidential Management Fellows Program.

(g) ACQUISITION WORKFORCE DEVELOPMENT STRATEGIC PLAN.—

(1) PURPOSE.—The purpose of this subsection is to authorize the preparation and completion of the Acquisition Workforce Development Strategic Plan, which is a plan for Federal agencies other than the Department of Defense to—

(A) develop a specific and actionable 5-year plan to increase the size of the acquisition workforce; and

(B) operate a government-wide acquisition intern program for the Federal agencies.

(2) ESTABLISHMENT OF PLAN.—The Associate Administrator shall be responsible for the management, oversight, and administration of the Acquisition Workforce Development Strategic Plan in cooperation and consultation with the Office of Federal Procurement Policy and with the assistance of the Federal Acquisition Institute.

(3) CRITERIA.—The Acquisition Workforce Development Strategic Plan shall include an examination of the following matters:

(A) The variety and complexity of acquisitions conducted by each Federal agency covered by the plan, and the workforce needed to effectively carry out the acquisitions.

(B) The development of a sustainable funding model to support efforts to hire, retain, and train an acquisition workforce of appropriate size and skill to effectively carry out the acquisition programs of the Federal agencies covered by the plan, including an examination of interagency funding methods and a discussion of how the model of the Defense Acquisition Workforce Development Fund could be applied to civilian agencies.

(C) Any strategic human capital planning necessary to hire, retain, and train an acquisition workforce of appropriate size and skill at each Federal agency covered by the plan.

(D) Methodologies that Federal agencies covered by the plan can use to project future acquisition workforce personnel hiring requirements, including an appropriate distribution of such personnel across each category of positions designated as acquisition workforce personnel under section 1703(g) of this title.

(E) Government-wide training standards and certification requirements necessary to enhance the mobility and career opportunities of the Federal acquisition workforce within the Federal agencies covered by the plan.

(F) If the Associate Administrator recommends as part of the plan a growth in the acquisition workforce of the Federal agencies covered by the plan below 25 percent over the next 5 years, an examination of each of the matters specified in subparagraphs (A) to (E) in the context of a 5-year plan that increases the size of such acquisition workforce by not less than 25 percent, or an explanation why such a level of growth would not be in the best interest of the Federal Government.

(4) DEADLINE FOR COMPLETION.—The Acquisition Workforce Development Strategic Plan shall be completed not later than one year after October 14, 2008, and in a fashion that allows for immediate implementation of its recommendations and guidelines.

(5) FUNDS.—The acquisition workforce development strategic plan shall be funded from the acquisition workforce training fund under section 1703(i) of this title.

(h) TRAINING IN THE ACQUISITION OF ARCHITECT AND ENGINEERING SERVICES.—The Administrator shall ensure that a sufficient number of Federal employees are trained in the acquisition of architect and engineering services.

(i) UTILIZATION OF RECRUITMENT AND RETENTION AUTHORITIES.—The Administrator, in coordination with the Director of the Office of Personnel Management, shall encourage executive agencies to use existing authorities, including direct hire authority and tuition assistance programs, to recruit and retain acquisition personnel and consider recruiting acquisition personnel who may be retiring from the private sector, consistent with existing laws and regulations.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3706; Pub. L. 111-383, div. A, title X, §1075(e)(15), Jan. 7, 2011, 124 Stat. 4375; Pub. L. 112-81, div. A, title VIII, §864(a), Dec. 31, 2011, 125 Stat. 1522; Pub. L. 112-239, div. A, title X, §1076(a)(14), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS NOT SHOWN IN TEXT

Subsec. (g) of this section was derived from Pub. L. 110-417, [div. A], title VIII, §869, Oct. 14, 2008, 122 Stat. 4553, which was set out as a note under section 433a of former Title 41, Public Contracts, prior to being repealed and reenacted as subsec. (g) of this section by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 869 of Pub. L. 110-417 was amended by Pub. L. 111-383, div. A, title X, §1075(e)(15), Jan. 7, 2011, 124 Stat. 4375. For ap-

plicability of that amendment to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 869 of Pub. L. 110–417 was amended as follows:

(1) in subsection (b), by striking “433(a)” and inserting “433a(a)”; and

(2) in subsection (c)(4)—

(A) by striking “37(j)” and inserting “37(g)”; and

(B) by striking “433(j)” and inserting “433(g)”.

Such references did not appear in the text of subsec. (g) as enacted. See Historical and Revision Notes below.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1704(a)(1)	no source.	
1704(a)(2)	41:433a(h).	Pub. L. 110–181, div. A, title VIII, § 855, Jan. 28, 2008, 122 Stat. 251.
1704(b)–(f) ..	41:433a(a)–(e).	
1704(g)	41:433a note.	Pub. L. 110–417, [div. A], title VIII, § 869, Oct. 14, 2008, 122 Stat. 4553.
1704(h), (i) ..	41:433a(f), (g).	

In subsection (a), the definition of “executive agency” is omitted as unnecessary.

In subsection (f)(1), the words “Not later than 1 year after the date of the enactment of this Act” are omitted as obsolete.

In subsection (g)(2), the words “Associate Administrator” are substituted for “Associate Administrator for Acquisition Workforce Programs designated under section 855(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 251; 41 U.S.C. 433(a))” because of subsection (a)(1).

In subsection (g)(3)(D), the reference to “section 37(j) of the Office of Federal Procurement Policy Act” is changed to “section 1703(g) of this title” to correct an error in the law.

Editorial Notes

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239, § 1076(a)(14), made technical amendment to directory language of Pub. L. 112–81, § 864(a)(2). See 2011 Amendment note below.

2011—Subsec. (b). Pub. L. 112–81, § 864(a)(2), as amended by Pub. L. 112–239, § 1076(a)(14), substituted “The Associate Administrator shall be located in the Office of Federal Procurement Policy.” for “The Associate Administrator shall be located in the Federal Acquisition Institute (or its successor).” in introductory provisions.

Pub. L. 112–81, § 864(a)(1), inserted “The Associate Administrator shall be chosen on the basis of demonstrated knowledge and expertise in acquisition, human capital, and management.” after “Programs.” in introductory provisions.

Subsec. (b)(5), (6). Pub. L. 112–81, § 864(a)(3)–(5), added par. (5) and redesignated former par. (5) as (6).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(14) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EXPANSION OF TRAINING AND USE OF INFORMATION TECHNOLOGY CADRES

Pub. L. 113–291, div. A, title VIII, § 835, Dec. 19, 2014, 128 Stat. 3449, provided that:

“(a) PURPOSE.—The purpose of this section is to ensure timely progress by Federal agencies toward developing, strengthening, and deploying information technology acquisition cadres consisting of personnel with highly specialized skills in information technology acquisition, including program and project managers.

“(b) STRATEGIC PLANNING.—

“(1) IN GENERAL.—The Administrator for Federal Procurement Policy, in consultation with the Administrator for E-Government and Information Technology, shall work with Federal agencies, other than the Department of Defense, to update their acquisition human capital plans that were developed pursuant to the October 27, 2009, guidance issued by the Administrator for Federal Procurement Policy in furtherance of section 1704(g) of title 41, United States Code (originally enacted as section 869 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4553)), to address how the agencies are meeting their human capital requirements to support the timely and effective acquisition of information technology.

“(2) ELEMENTS.—The updates required by paragraph (1) shall be submitted to the Administrator for Federal Procurement Policy and shall address, at a minimum, each Federal agency’s consideration or use of the following procedures:

“(A) Development of an information technology acquisition cadre within the agency or use of memoranda of understanding with other agencies that have such cadres or personnel with experience relevant to the agency’s information technology acquisition needs.

“(B) Development of personnel assigned to information technology acquisitions, including cross-functional training of acquisition information technology and program personnel.

“(C) Use of the specialized career path for information technology program managers as designated by the Office of Personnel Management and plans for strengthening information technology program management.

“(D) Use of direct hire authority.

“(E) Conduct of peer reviews.

“(F) Piloting of innovative approaches to information technology acquisition workforce development, such as industry-government rotations.

“(c) FEDERAL AGENCY DEFINED.—In this section, the term ‘Federal agency’ means each agency listed in section 901(b) of title 31, United States Code.”

§ 1705. Advocates for competition

(a) ESTABLISHMENT AND DESIGNATION.—

(1) ESTABLISHMENT.—Each executive agency has an advocate for competition.

(2) DESIGNATION.—The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for the executive agency on July 18, 1984 (other than the senior procurement executive designated pursuant to section 1702(c) of this title) to serve as the advocate for competition;

(B) not assign those officers or employees duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide those officers or employees with the staff or assistance necessary to carry out the duties and responsibilities of the advocate for competition, such as individuals who are specialists in engineering, technical operations, contract administration, financial management, supply manage-

ment, and utilization of small and disadvantaged business concerns.

(b) **DUTIES AND FUNCTIONS.**—The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to, and promoting full and open competition in, the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency;

(4) prepare and transmit to the senior procurement executive an annual report describing—

(A) the advocate's activities under this section;

(B) new initiatives required to increase competition; and

(C) remaining barriers to full and open competition;

(5) recommend to the senior procurement executive—

(A) goals and the plans for increasing competition on a fiscal year basis; and

(B) a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

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

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

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3709; Pub. L. 115-232, div. A, title VIII, § 836(b)(2), Aug. 13, 2018, 132 Stat. 1861.)

HISTORICAL AND REVISION NOTES

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

Editorial Notes

AMENDMENTS

2018—Subsec. (c). Pub. L. 115-232 substituted “commercial products and commercial services” for “commercial items”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

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

§ 1706. Personnel evaluation

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

Editorial Notes

REFERENCES IN TEXT

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

The Defense Procurement Reform Act of 1984, referred to in par. (2), is Pub. L. 98-525, title XII, Oct. 19, 1984, 98 Stat. 2588. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 2302 of Title 10, Armed Forces, and Tables.

§ 1707. Publication of proposed regulations

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

(1) **REQUIRED COMMENT PERIOD.**—Except as provided in subsection (d), a procurement policy, regulation, procedure, or form (including an amendment or modification thereto) may

not take effect until 60 days after it is published for public comment in the Federal Register pursuant to subsection (b) if it—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

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

§ 1708. Procurement notice

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

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

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

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

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

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

(b) EXEMPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 3204(a) of title 10; or

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

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

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

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

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

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

(2) provisions that—

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

(ii) identify the source in the Federal Government, if any, from which the technical data may be obtained; and

(B)(i) state whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and

(ii) if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of those procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial products or commercial services using special simplified procedures—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.—A notice of solicitation, award, or order required to be published under subsection (a) shall be published by electronic means. The notice must be electronically accessible in a form that allows convenient and universal user access through the single Government-wide point of entry designated in the Federal Acquisition Regulation.

(e) TIME LIMITATIONS.—

(1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency required by subsection (a)(2) to publish a notice of solicitation may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)(2) that—

(i) in the case of a solicitation for research and development, is earlier than 45 days after the date the notice required for a bid or proposal for a contract described in subsection (a)(2)(A) is published;

(ii) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than 30 days after the date the notice required for an order described in subsection (a)(2)(B) is published; or

(iii) in any other case, is earlier than 30 days after the date the solicitation is issued.

(2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.—An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation for which a deadline is not provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (1) for the issuance of

solicitations and the submission of bids or proposals for the procurement of commercial products or commercial services.

(f) **CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.**—An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under subsection (a)(1) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(g) **AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.**—An executive agency shall make available to a business concern, or the authorized representative of a concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of the package.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3711; Pub. L. 115–232, div. A, title VIII, § 836(b)(3), Aug. 13, 2018, 132 Stat. 1861; Pub. L. 117–81, div. A, title XVII, § 1702(h)(4), Dec. 27, 2021, 135 Stat. 2158.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1708(a)	41:416(a)(1).	Pub. L. 93–400, § 18, as added Pub. L. 98–369, title VII, § 2732(a), July 18, 1984, 98 Stat. 1195; Pub. L. 98–577, title III, § 303(a), Oct. 30, 1984, 98 Stat. 3077; Pub. L. 99–500, § 101(c) [title X, § 922(b), (d)(2)], Oct. 18, 1986, 100 Stat. 1783–151, 1783–152; Pub. L. 99–591, § 101(c) [title X, § 922(b), (d)(2)], Oct. 30, 1986, 100 Stat. 3341–151, 3341–152; Pub. L. 99–661, title IX, formerly title IV, § 922(b), (d)(2), Nov. 14, 1986, 100 Stat. 3931, 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, title VIII, § 806(d), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103–355, title I, § 1055(b)(1), title IV, §§ 4201(b), (c), 4202(a)–(c), title VIII, § 8302, title IX, § 9001(b), Oct. 13, 1994, 108 Stat. 3265, 3344, 3398, 3402; Pub. L. 104–106, title XLII, § 4101(c), title XLIII, § 4202(d), title XLIII, §§ 4310, 4321(h)(3), Feb. 10, 1996, 110 Stat. 642, 654, 670, 675; Pub. L. 105–85, title VIII, § 850(e)(2), Nov. 18, 1997, 111 Stat. 1849; Pub. L. 105–261, title X, § 1069(d)(1), Oct. 17, 1998, 112 Stat. 2136; Pub. L. 106–398, § 1 [(div. A), title VIII, § 810(a), (b)], Oct. 30, 2000, 114 Stat. 1654A–209; Pub. L. 107–296, title VIII, § 833(c)(2), Nov. 25, 2002, 116 Stat. 2226.
1708(b)(1), (2).	41:416(c).	
1708(b)(3)	no source.	
1708(c)	41:416(b).	
1708(d)	41:416(a)(2), (7).	
1708(e)	41:416(a)(3), (5), (6).	
1708(f)	41:416(a)(4).	
1708(g)	41:416(d).	

In subsection (a)(3), the words “under a basic agreement, basic ordering agreement, or similar arrangement” are substituted for “referred to in clause (A)(ii)” for clarity. The words “by the Secretary of Commerce” are omitted as obsolete. The Secretary of Commerce no longer has responsibility for publishing notices of awards or orders. See revision note for subsection (d).

In subsection (b)(2), the text of 41 U.S.C. 416(C)(1)(H) is omitted because the procurement authority of the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002 (6 U.S.C. 339(c)) expired on September 30, 2007.

Subsection (b)(3) is added because of section 850(e)(3) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85, 111 Stat. 1849, 15:637 note), which in part provided that the amendments made by section 850(e)(2), which amended 41:416(c)(1), be implemented in a manner consistent with applicable international agreements.

Subsection (d) is substituted for 41:416(a)(2) and (7) to eliminate unnecessary words. Federal Business Opportunities is the designated single point of universal electronic public access for publication of all procurement information and notices previously published by the Secretary of Commerce in the Commerce Business Daily. See 66 Fed. Reg. 27407, May 16, 2001, 68 Fed. Reg. 56678, October 1, 2003, 48 CFR ch. 1, subch. B, part 5, and the special notice posted in CBDNet on December 28, 2001, and printed on January 2, 2002.

In subsection (e)(1)(B)(i), the words “required for a bid or proposal for a contract described in” are substituted for “required by” for clarity.

In subsection (e)(1)(B)(ii), the words “required for an order described in” are substituted for “required by” for clarity.

Editorial Notes

AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 117–81 substituted “section 3204(a)” for “section 2304(c)”.

2018—Subsecs. (c)(6), (e)(3). Pub. L. 115–232 substituted “commercial products or commercial services” for “commercial items”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

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

APPLICABILITY TO TENNESSEE VALLEY AUTHORITY

Pub. L. 98–577, title III, § 303(c), Oct. 30, 1984, 98 Stat. 3079, provided that: “The provisions of the amendments made by subsection (a) of this section [see Tables for classification] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.”

§ 1709. Contracting functions performed by Federal personnel

(a) **COVERED PERSONNEL.**—Personnel referred to in subsection (b) are—

- (1) an employee, as defined in section 2105 of title 5;
- (2) a member of the armed forces; and
- (3) an individual assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

(b) **LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.**—No individual who is not an individual described in subsection (a) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (a) with adequate training and capabilities to perform the evaluations and analyses are not readily avail-

able in the agency or another Federal agency. When administering this subsection, the head of each executive agency shall determine in accordance with standards and procedures prescribed in the Federal Acquisition Regulation whether—

(1) a sufficient number of personnel described in subsection (a) in the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and

(2) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

(c) **CERTAIN RELATIONSHIP NOT AFFECTED.**—This section does not affect the relationship between the Federal Government and a Federally funded research and development center.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3714.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1709(a)	41:419(b).	Pub. L. 93–400, § 23, as added Pub. L. 103–355, title VI, § 6002(a), Oct. 13, 1994, 108 Stat. 3363.
1709(b)	41:419(a).	
1709(c)	41:419(c).	

In subsection (a), before paragraph (1), the words “Personnel referred to in subsection (b) are” are substituted for “For purposes of subsection (a) of this section, the personnel described in this subsection are as follows” to eliminate unnecessary words. In paragraph (3), the words “employee from State or local governments” are substituted for “person” for clarity.

SENATE REVISION AMENDMENT

In subsec. (a)(3), “individual” substituted for “employee from State or local governments” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

Statutory Notes and Related Subsidiaries

REQUIREMENT FOR GUIDANCE AND REGULATIONS

Pub. L. 103–355, title VI, § 6002(b), Oct. 13, 1994, 108 Stat. 3363, provided that: “The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall—

“(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

“(2) provide guidance and promulgate regulations regarding—

“(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

“(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.”

§ 1710. Public-private competition required before conversion to contractor performance

(a) **PUBLIC-PRIVATE COMPETITION.**—

(1) **WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS ALLOWED.**—A function of an executive agency performed by 10 or more agency civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by agency civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the executive agency with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by agency civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Federal Government over the life of the contract, including—

(i) the estimated cost to the Federal Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Federal Government for performance of the function by agency civilian employees; and

(iii) an estimate of all other costs and expenditures that the Federal Government would incur because of the award of the contract;

(F) requires continued performance of the function by agency civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by agency civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) \$10,000,000; and

(G) examines the effect of performance of the function by a contractor on the agency mission associated with the performance of the function.

(2) **NOT A NEW REQUIREMENT.**—A function that is performed by the executive agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) **PROHIBITIONS.**—In no case may a function being performed by executive agency personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(b) **CONSULTING WITH AFFECTED EMPLOYEES OR THEIR REPRESENTATIVES.**—

(1) **CONSULTING WITH AFFECTED EMPLOYEES.**—Each civilian employee of an executive agency

responsible for determining under Office of Management and Budget Circular A76 whether to convert to contractor performance any function of the executive agency—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of the employees on the development and preparation of that statement and that study; and

(B) may consult with the employees on other matters relating to that determination.

(2) CONSULTING WITH REPRESENTATIVES.—

(A) EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) EMPLOYEES NOT REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) REGULATIONS.—The head of each executive agency shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—

(1) REPORT.—Before commencing a public-private competition under subsection (a), the head of an executive agency shall submit to Congress a report containing the following:

(A) The function for which the public-private competition is to be conducted.

(B) The location at which the function is performed by agency civilian employees.

(C) The number of agency civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of an executive agency to impose predetermined constraints or limitations on agency civilian employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) EXAMINATION OF POTENTIAL ECONOMIC EFFECT.—The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) agency civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Federal Government, if more than 50 agency civilian employees perform the function.

(3) OBJECTIONS TO PUBLIC-PRIVATE COMPETITION.—

(A) GROUNDS.—A representative individual or entity at a facility where a public-private competition is conducted may submit to the head of the executive agency an objection to the public-private competition on the grounds that—

(i) the report required by paragraph (1) has not been submitted; or

(ii) the certification required by paragraph (1)(E) was not included in the report required by paragraph (1).

(B) DEADLINES.—The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(C) REPORT AND CERTIFICATION REQUIRED BEFORE SOLICITATION OR AWARD OF CONTRACT.—If the head of the executive agency determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY DISABLED PEOPLE.—This section shall not apply to a commercial or industrial type function of an executive agency that is—

(1) included on the procurement list established pursuant to section 8503 of this title; or

(2) planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled people in accordance with chapter 85 of this title.

(e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3715.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1710	41:439.	Pub. L. 93-400, § 43, as added Pub. L. 110-181, title III, § 327(a), Jan. 28, 2008, 122 Stat. 63.

In the heading for subsection (d) and in subsection (d)(2), the words “disabled people” are substituted for “handicapped persons” for consistency with chapter 85 of the revised title.

§ 1711. Value engineering

Each executive agency shall establish and maintain cost-effective procedures and processes for analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of the agency. The analysis shall be—

- (1) performed by qualified agency or contractor personnel; and
- (2) directed at improving performance, reliability, quality, safety, and life cycle costs.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3718.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1711	41:432.	Pub. L. 93-400, § 36, as added Pub. L. 104-106, title XLIII, § 4306(a), Feb. 10, 1996, 110 Stat. 665.

§ 1712. Record requirements

(a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall establish and maintain for 5 years a computer file, by fiscal year, containing unclassified records of all procurements greater than the simplified acquisition threshold in that fiscal year.

(b) CONTENTS.—The record established under subsection (a) shall include, with respect to each procurement carried out using—

- (1) competitive procedures—
 - (A) the date of contract award;
 - (B) information identifying the source to whom the contract was awarded;
 - (C) the property or services the Federal Government obtains under the procurement; and
 - (D) the total cost of the procurement; or
- (2) procedures other than competitive procedures—
 - (A) the information described in paragraph (1);
 - (B) the reason under section 3304(a) of this title or section 3204(a) of title 10 for using the procedures; and
 - (C) the identity of the organization or activity that conducted the procurement.

(c) SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN ONE BID OR PROPOSAL.—Information included in a record pursuant to subsection (b)(1) that relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in the record. The record of that information shall be designated “noncompetitive procurements using competitive procedures”.

(d) TRANSMISSION AND DATA ENTRY OF INFORMATION.—The head of each executive agency shall—

- (1) ensure the accuracy of the information included in the record established and maintained by the agency under subsection (a); and

(2) transmit in a timely manner such information to the General Services Administration for entry into the Federal Procurement Data System referred to in section 1122(a)(4) of this title, or any successor system.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3718; Pub. L. 117-81, div. A, title XVII, § 1702(h)(5), 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>
1712	41:417.	Pub. L. 93-400, § 19, as added Pub. L. 98-369, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197; Pub. L. 103-355, title IV, § 4403, Oct. 13, 1994, 108 Stat. 3349; Pub. L. 110-417, title VIII, § 874(b), Oct. 14, 2008, 122 Stat. 4558.

Editorial Notes

AMENDMENTS

2021—Subsec. (b)(2)(B). Pub. L. 117-81 substituted “section 3204(a)” for “section 2304(c)”.

§ 1713. Procurement data

(a) DEFINITIONS.—In this section:

(1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term “qualified HUBZone small business concern” has the meaning given that term in section 31(b) of the Small Business Act.

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term “small business concern owned and controlled by women” has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of the Women’s Business Ownership Act of 1988 (Public Law 100-533, 102 Stat. 2692).

(b) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of qualified HUBZone small business concerns, the number of small businesses owned and controlled by women, and the number of small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, that are first time recipients of contracts from the agency. The Office shall take appropriate action to ascertain, for each fiscal year, the number of those small businesses that have newly entered the Federal market.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3719; Pub. L. 115-91, div. A, title XVII, § 1701(a)(4)(F)(ii), 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>
1713(a)	41:417a(b).	Pub. L. 100-533, title V, § 502, Oct. 25, 1988, 102 Stat. 2697; Pub. L. 105-135, title VI, § 604(f)(2), Dec. 2, 1997, 111 Stat. 2634.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1713(b)	41:417a(a).	

In subsection (b), the words “socially and economically disadvantaged individuals” are substituted for “socially and economically disadvantaged businesses” for consistency with the term set out in subsection (a).

Editorial Notes

REFERENCES IN TEXT

Section 31(b) of the Small Business Act, referred to in subsec. (a)(1), is classified to section 657a(b) of Title 15, Commerce and Trade.

Section 204 of the Women’s Business Ownership Act of 1988, referred to in subsec. (a)(3), is section 204 of Pub. L. 100-533, which is set out as a note under section 637 of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115-91 substituted “section 31(b) of the Small Business Act” for “section 3(p) of the Small Business Act (15 U.S.C. 632(p))”.

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.

CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES

Sec.	
1901.	Simplified acquisition procedures.
1902.	Procedures applicable to purchases below micro-purchase threshold.
1903.	Special emergency procurement authority.
1904.	Certain transactions for defense against attack.
1905.	List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold.
1906.	List of laws inapplicable to procurements of commercial products and commercial services.
1907.	List of laws inapplicable to procurements of commercially available off-the-shelf items.
1908.	Inflation adjustment of acquisition-related dollar thresholds.
1909.	Management of purchase cards.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, § 836(b)(6)(B)(ii), Aug. 13, 2018, 132 Stat. 1861, substituted “List of laws inapplicable to procurements of commercial products and commercial services” for “List of laws inapplicable to procurements of commercial items” in item 1906.

2012—Pub. L. 112-194, § 2(a)(2), Oct. 5, 2012, 126 Stat. 1447, added item 1909.

§ 1901. Simplified acquisition procedures

(a) **WHEN PROCEDURES ARE TO BE USED.**—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) **PROHIBITION ON DIVIDING PURCHASES.**—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified acquisition procedures required by subsection (a).

(c) **PROMOTION OF COMPETITION REQUIRED.**—When using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) **CONSIDERATION OF OFFERS TIMELY RECEIVED.**—The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) **SPECIAL RULES FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.**—The Federal Acquisition Regulation shall provide that an executive agency using special simplified procedures to purchase commercial products or commercial services—

(1) shall publish a notice in accordance with section 1708 of this title and, as provided in section 1708(c)(4) of this title, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 3204(e) of title 10 or section 3304(e) of this title, as applicable; and

(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3719; Pub. L. 115-232, div. A, title VIII, § 836(b)(4), Aug. 13, 2018, 132 Stat. 1861; Pub. L. 117-81, div. A, title XVII, § 1702(h)(6), 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>
1901	41:427.	Pub. L. 93-400, § 31, as added Pub. L. 103-355, title IV, § 4201(a), Oct. 13, 1994, 108 Stat. 3342; Pub. L. 104-106, title XLII, § 4202(c), title XLIII, § 4302(b), Feb. 10, 1996, 110 Stat. 653, 658, as amended Pub. L. 104-201, title X, § 1074(b)(6) (less effective date), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105-85, title VIII, § 850(d), Nov. 18, 1997, 111 Stat. 1848.

Section 31(e) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(e)) is omitted as obsolete.

In subsection (e)(2), the reference to section 253 of this title is limited to section 3303(e) of the revised title for clarity.

Editorial Notes**AMENDMENTS**

2021—Subsec. (e)(2). Pub. L. 117–81 substituted “section 3204(e)” for “section 2304(f)”.

2018—Subsec. (a)(2). Pub. L. 115–232, §836(b)(4)(A), substituted “commercial products or commercial services” for “commercial items”.

Subsec. (e). Pub. L. 115–232, §836(b)(4)(B), substituted “Commercial Products and Commercial Services” for “Commercial Items” in heading and, in introductory provisions, substituted “commercial products or commercial services” for “commercial items”.

EFFECTIVE DATE OF 2018 AMENDMENT

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

Statutory Notes and Related Subsidiaries**PROCUREMENT THROUGH COMMERCIAL E-COMMERCE PORTALS**

Pub. L. 115–91, div. A, title VIII, §846, Dec. 12, 2017, 131 Stat. 1483, as amended by Pub. L. 115–232, div. A, title VIII, §836(a), Aug. 13, 2018, 132 Stat. 1875; Pub. L. 117–81, div. A, title VIII, §853, title XVII, §1702(i)(2), Dec. 27, 2021, 135 Stat. 1848, 2159, provided that:

“(a) **ESTABLISHMENT OF PROGRAM.**—The Administrator shall establish a program to procure commercial products through commercial e-commerce portals for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products. The Administrator shall carry out the program in accordance with this section, through multiple contracts with multiple commercial e-commerce portal providers, and shall design the program to be implemented in phases with the objective of enabling Government-wide use of such portals.

“(b) **USE OF PROGRAM.**—The head of a department or agency may procure, as appropriate, commercial products for the department or agency using the program established pursuant to subsection (a).

“(c) **IMPLEMENTATION AND REPORTING REQUIREMENTS.**—The Director of the Office of Management and Budget, in consultation with the Administrator and the heads of other relevant departments and agencies, shall carry out the implementation phases set forth in, and submit to the appropriate congressional committees the items of information required by, the following paragraphs:

“(1) **PHASE I: IMPLEMENTATION PLAN.**—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], an implementation plan and schedule for carrying out the program established pursuant to subsection (a), including a discussion and recommendations regarding whether any changes to, or exemptions from, laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government are necessary for effective implementation of this section.

“(2) **PHASE II: MARKET ANALYSIS AND CONSULTATION.**—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), recommendations for any changes to, or exemptions from, laws necessary for effective implementation of this section, and information on the results of the following actions:

“(A) Market analysis and initial communications with potential commercial e-commerce portal providers on technical considerations of how the portals function (including the use of standard terms and conditions of the portals by the Government), the degree of customization that can occur without creating a Government-unique portal, the measures

necessary to address the considerations for supplier and product screening specified in subsection (e), security of data, considerations pertaining to non-traditional Government contractors, and potential fees, if any, to be charged by the Administrator, the portal provider, or the suppliers for participation in the program established pursuant to subsection (a).

“(B) Consultation with affected departments and agencies about their unique procurement needs, such as supply chain risks for health care products, information technology, software, or any other category determined necessary by the Administrator.

“(C) An assessment of the products or product categories that are suitable for purchase on the commercial e-commerce portals.

“(D) An assessment of the precautions necessary to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats.

“(E) A review of standard terms and conditions of commercial e-commerce portals in the context of Government requirements.

“(F) An assessment of the impact on existing programs, including schedules, set-asides for small business concerns, and other preference programs.

“(3) **PHASE III: PROGRAM IMPLEMENTATION GUIDANCE.**—Not later than two years after the date of the submission of the implementation plan and schedule required under paragraph (1), guidance to implement and govern the use of the program established pursuant to subsection (a), including protocols for oversight of procurement through the program, and compliance with laws pertaining to supplier and product screening requirements, data security, and data analytics.

“(4) **ADDITIONAL IMPLEMENTATION PHASES.**—A description of additional implementation phases, as determined by the Administrator, that includes a selection of agencies to participate in any such additional implementation phase (which may include the award of contracts to multiple commercial e-commerce portal providers).

“(5) **ADDITIONAL TESTING.**—Not later than 180 days after the date of the enactment of this paragraph [Dec. 27, 2021], the Administrator shall—

“(A) begin testing commercial e-commerce portal models (other than any such model selected for the initial proof of concept) identified pursuant to paragraph (2); and

“(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes—

“(i) a summary of the assessments conducted under paragraph (2) with respect to a commercial e-commerce portal model identified pursuant to such paragraph;

“(ii) a list of the types of commercial products that could be procured using models tested pursuant to subparagraph (A);

“(iii) an estimate of the amount that could be spent by the head of a department or agency under the program, disaggregated by type of commercial e-commerce portal model; and

“(iv) an update on the models tested pursuant to subparagraph (A) and a timeline for completion of such testing.

“(6) **REPORT.**—Upon completion of testing conducted under paragraph (5) and before taking any action with respect to the commercial e-commerce portal models tested, the Administrator of General Services shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Reform of the House of Representatives, and the Committee on

Homeland Security and Governmental Affairs of the Senate, a report on the results of such testing that includes—

“(A) an assessment and comparison of commercial e-commerce portal models with respect to—

“(i) price and quality of the commercial products supplied by each commercial e-commerce portal model;

“(ii) supplier reliability and service;

“(iii) safeguards for the security of Government information and third-party supplier proprietary information;

“(iv) protections against counterfeit commercial products;

“(v) supply chain risks, particularly with respect to complex commercial products; and

“(vi) overall adherence to Federal procurement rules and policies; and

“(B) an analysis of the costs and benefits of the convenience to the Federal Government of procuring commercial products from each such commercial e-commerce portal model.

“(d) CONSIDERATIONS FOR COMMERCIAL E-COMMERCE PORTALS.—The Administrator shall consider commercial e-commerce portals for use under the program established pursuant to subsection (a) that are widely used in the private sector and have or can be configured to have features that facilitate the execution of program objectives, including features related to supplier and product selection that are frequently updated, an assortment of product and supplier reviews, invoicing payment, and customer service.

“(e) INFORMATION ON SUPPLIERS, PRODUCTS, AND PURCHASES.—

“(1) SUPPLIER PARTICIPATION AND PRODUCT SCREENING.—The Administrator shall provide or ensure electronic availability to a commercial e-commerce portal provider awarded a contract pursuant to subsection (a) on a periodic basis information necessary to ensure compliance with laws pertaining to supplier and product screening as identified during implementation phase III, as described in subsection (c)(3).

“(2) PROVISION OF ORDER INFORMATION.—The Administrator shall require each commercial e-commerce portal provider awarded a contract pursuant to subsection (a) to provide order information as determined by the Administrator during implementation phase II, as described in subsection (c)(2).

“(f) RELATIONSHIP TO OTHER PROVISIONS OF LAW.—

“(1) All laws, including laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, apply to the program established pursuant to subsection (a) unless otherwise provided in this section.

“(2) A procurement of a product made through a commercial e-commerce portal under the program established pursuant to subsection (a) is deemed to be an award of a prime contract for purposes of the goals established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)), if the purchase is from a supplier that is a small business concern.

“(3) Nothing in this section shall be construed as limiting the authority of a department or agency to restrict competition to small business concerns.

“(4) Nothing in this section shall be construed as limiting the applicability of section 1341 of title 31, United States Code (popularly referred to as the Anti-Deficiency Act).

“(5) A procurement of a product made through a commercial e-commerce portal under the program established pursuant to subsection (a) is deemed to satisfy requirements for full and open competition pursuant to sections 3201 through 3205 of title 10, United States Code, and section 3301 of title 41, United States Code, if—

“(A) there are offers from two or more suppliers of such a product or similar product with substantially the same physical, functional, or performance characteristics on the online marketplace; and

“(B) the Administrator establishes procedures to implement subparagraph (A) and notifies Congress at least 30 days before implementing such procedures.

“(g) USE OF COMMERCIAL PRACTICES AND STANDARD TERMS AND CONDITIONS.—A procurement of a product through a commercial e-commerce portal used under the program established pursuant to subsection (a) shall be made, to the maximum extent practicable, under the standard terms and conditions of the portal relating to purchasing on the portal.

“(h) DISCLOSURE, PROTECTION, AND USE OF INFORMATION.—In any contract awarded to a commercial e-commerce portal provider pursuant to subsection (a), the Administrator shall require that the provider—

“(1) agree not to sell or otherwise make available to any third party any information pertaining to a product ordered by the Federal Government through the commercial e-commerce portal in a manner that identifies the Federal Government, or any of its departments or agencies, as the purchaser, except if the information is needed to process or deliver an order or the Administrator provides written consent;

“(2) agree to take the necessary precautions to safeguard any information pertaining to the Federal Government, especially precautions necessary to protect against national security or cybersecurity threats; and

“(3) agree not to use, for pricing, marketing, competitive, or other purposes, any information, including any Government-owned data, such as purchasing trends or spending habits, related to a product from a third-party supplier featured on the commercial e-commerce portal or the transaction of such product, except as necessary to comply with the requirements of the program established in subsection (a).

“(i) SIMPLIFIED ACQUISITION THRESHOLD.—A procurement through a commercial e-commerce portal used under the program established pursuant to subsection (a) shall not exceed the simplified acquisition threshold in section 134 of title 41, United States Code.

“(j) COMPTROLLER GENERAL ASSESSMENTS.—

“(1) ASSESSMENT OF IMPLEMENTATION PLAN.—Not later than 90 days after the Director of the Office of Management and Budget submits the implementation plan described in subsection (c)(1) to the appropriate congressional committees, the Comptroller General of the United States shall submit to the appropriate congressional committees an assessment of the plan, including any other matters the Comptroller General considers relevant to the plan.

“(2) ASSESSMENT OF PROGRAM IMPLEMENTATION.—Not later than three years after the first contract with a commercial e-commerce portal provider is awarded pursuant to subsection (a), the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the challenges and benefits the General Services Administration and participating departments and agencies observe regarding implementation of the program established pursuant to subsection (a). The report shall include the following elements:

“(A) A description of the acquisition of the commercial e-commerce portals (including the extent to which the portals had to be configured or otherwise modified to meet the needs of the program) costs, and the implementation schedule.

“(B) A description of participation by suppliers, with particular attention to those described under subsection (e), that have registered or that have sold goods with at least one commercial e-commerce portal provider, including numbers, categories, and trends.

“(C) The effect, if any, of the program on the ability of agencies to meet goals established for suppliers and products described under subsection (e), including goals established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

“(D) A discussion of the limitations, if any, to participation by suppliers in the program.

“(E) Any other matters the Comptroller General considers relevant to report.

“(k) DEFINITIONS.—In this section:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of General Services.

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the following:

“(A) The Committees on Armed Services of the Senate and House of Representatives.

“(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives.

“(C) The Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

“(3) COMMERCIAL E-COMMERCE PORTAL.—The term ‘commercial e-commerce portal’ means a commercial solution providing for the purchase of commercial products aggregated, distributed, sold, or manufactured via an online portal. The term does not include an online portal managed by the Government for, or predominantly for use by, Government agencies.

“(4) COMMERCIAL PRODUCT.—The term ‘commercial product’ means a commercially available off-the-shelf item, as defined in section 104 of title 41, United States Code, except the term does not include services.

“(5) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).”

§ 1902. Procedures applicable to purchases below micro-purchase threshold

(a) DEFINITION.—

(1) Except as provided in paragraph (2) of this subsection, for purposes of this section, the micro-purchase threshold is \$10,000.

(2) For purposes of this section, the micro-purchase threshold for procurement activities administered under sections 6303 through 6305 of title 31 by institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), or related or affiliated nonprofit entities, or by nonprofit research organizations or independent research institutes is—

(A) \$10,000; or

(B) such higher threshold as determined appropriate by the head of the relevant executive agency and consistent with clean audit findings under chapter 75 of title 31, internal institutional risk assessment, or State law.

(b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICABILITY OF CERTAIN AUTHORITY.—

(1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each executive agency shall ensure that procuring activities of that agency, when awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 15 U.S.C. 644 note).

(2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to a purchase

with a price exceeding the micro-purchase threshold.

(c) NONAPPLICABILITY OF CERTAIN PROVISIONS.—An executive agency purchase with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and chapter 83 of this title.

(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase with a price not greater than the micro-purchase threshold may be made without obtaining competitive quotations if an employee of an executive agency or a member of the armed forces, authorized to do so, determines that the price for the purchase is reasonable.

(e) EQUITABLE DISTRIBUTION.—Purchases with a price not greater than the micro-purchase threshold shall be distributed equitably among qualified suppliers.

(f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.—This section shall be implemented through the Federal Acquisition Regulation.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3720; Pub. L. 114-328, div. A, title II, §217(b), Dec. 23, 2016, 130 Stat. 2051; Pub. L. 115-91, div. A, title VIII, §806(a), Dec. 12, 2017, 131 Stat. 1456; Pub. L. 115-232, div. A, title VIII, §§812(a)(2)(C)(ix), 821(b), Aug. 13, 2018, 132 Stat. 1847, 1853.)

ADJUSTMENT OF MICRO-PURCHASE THRESHOLD

For adjustment of dollar threshold pursuant to section 1908 of this title, see definition of micro-purchase threshold in Federal Acquisition Regulation 2.101.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1902	41:428.	Pub. L. 93-400, §32, as added Pub. L. 103-355, title IV, §4301(a), Oct. 13, 1994, 108 Stat. 3346; Pub. L. 104-106, title XLIII, §§4304(b)(4), (c)(3), 4311, Feb. 10, 1996, 110 Stat. 664, 671.

SENATE REVISION AMENDMENT

In subsecs. (a), (d), and (e), “\$3,000” substituted for “\$2,500” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-232, §821(b), struck out “sections 2338 and 2339 of title 10 and” after “Except as provided in”.

Subsec. (b)(1). Pub. L. 115-232, §812(a)(2)(C)(ix), struck out “. section 2323 of title 10,” after “(15 U.S.C. 637(a))”.

2017—Subsec. (a)(1). Pub. L. 115-91 substituted “\$10,000” for “\$3,000”.

2016—Subsec. (a). Pub. L. 114-328, §217(b)(1), designated existing provisions as par. (1), substituted “Except as provided in sections 2338 and 2339 of title 10 and paragraph (2) of this subsection, for purposes” for “For purposes” and added par. (2).

Subsecs. (d), (e). Pub. L. 114-328, §217(b)(2), substituted “with a price not greater than the micro-purchase threshold” for “not greater than \$3,000”.

Statutory Notes and Related Subsidiaries**CONVENIENCE CHECKS**

Pub. L. 115-91, div. A, title VIII, §806(b), Dec. 12, 2017, 131 Stat. 1456, provided that: “A convenience check may not be used for an amount in excess of one half of the micro-purchase threshold under section 1902(a) of title 41, United States Code, or a lower amount established by the head of the agency.”

MICRO-PURCHASE THRESHOLD FOR PROCUREMENT SOLICITATIONS BY RESEARCH INSTITUTIONS

Pub. L. 114-329, div. A, title II, §207, Jan. 6, 2017, 130 Stat. 3001, provided that:

“(a) **MICRO-PURCHASE THRESHOLD.**—The micro-purchase threshold for procurement activities administered under sections 6303 through 6305 of title 31, United States Code, awarded by the Foundation, the National Aeronautics and Space Administration, or the National Institute of Standards and Technology to institutions of higher education, or related or affiliated nonprofit entities, or to nonprofit research organizations or independent research institutes is—

“(1) \$10,000 (as adjusted periodically to account for inflation); or

“(2) such higher threshold as determined appropriate by the head of the relevant executive agency and consistent with audit findings under chapter 75 of title 31, United States Code, internal institutional risk assessment, or State law.

“(b) **UNIFORM GUIDANCE.**—The Uniform Guidance shall be revised to conform with the requirements of this section. For purposes of the preceding sentence, the term ‘Uniform Guidance’ means the uniform administrative requirements, cost principles, and audit requirements for Federal awards contained in part 200 of title 2 of the Code of Federal Regulations.”

[For definitions of terms used in section 207 of Pub. L. 114-329, set out above, see section 2 of Pub. L. 114-329, set out as a note under section 1862s of Title 42, The Public Health and Welfare.]

MICRO-PURCHASE GUIDELINES

Pub. L. 111-240, title I, §1332, Sept. 27, 2010, 124 Stat. 2541, provided that: “Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Director of the Office of Management and Budget, in coordination with the Administrator of General Services, shall issue guidelines regarding the analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small business concerns in purchases in an amount not in excess of the micro-purchase threshold, as defined in section 32 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 428) [now 41 U.S.C. 1902] (in this section referred to as ‘micro-purchases’), consistent with the national policy on small business participation in Federal procurements set forth in sections 2(a) and 15(g) of the Small Business Act (15 U.S.C. 631(a) and 644(g)), and dissemination of best practices for participation of small business concerns in micro-purchases.”

[For definition of “small business concern” as used in section 1332 of Pub. L. 111-240, set out above, see section 1001 of Pub. L. 111-240, set out as a note under section 632 of Title 15, Commerce and Trade.]

§ 1903. Special emergency procurement authority

(a) **APPLICABILITY.**—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

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

(2) to facilitate the defense against or recovery from cyber, nuclear, biological, chemical,

or radiological attack against the United States;

(3) in support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance pursuant to chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292 et seq.); or

(4) in support of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).

(b) **INCREASED THRESHOLDS AND LIMITATION.**—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) \$15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term “simplified acquisition threshold” means—

(A) \$750,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$1,500,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the \$5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 3205(a)(2) of title 10 is deemed to be \$10,000,000.

(c) **AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL PRODUCT OR COMMERCIAL SERVICE.**—

(1) **IN GENERAL.**—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial product or a commercial service for the purpose of carrying out the procurement.

(2) **CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.**—A contract in an amount of more than \$15,000,000 that is awarded on a sole source basis for a product or service treated as a commercial product or a commercial service under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and chapter 271 of title 10.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3721; Pub. L. 114-92, div. A, title VIII, §816, Nov. 25, 2015, 129 Stat. 897; Pub. L. 114-328, div. A, title VIII, §816, title XVI, §1641, Dec. 23, 2016, 130 Stat. 2272, 2600; Pub. L. 115-232, div. A, title VIII, §836(b)(5), Aug. 13, 2018, 132 Stat. 1861; Pub. L. 117-81, div. A, title XVII, §1702(h)(7), 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>
1903(a)	41:428a(a), (e).	Pub. L. 93-400, §32A, as added Pub. L. 108-136, title XIV, §1443(a)(1), Nov. 24, 2003, 117 Stat. 1675; Pub. L. 108-375, title VIII, §822, Oct. 28, 2004, 118 Stat. 2016.
1903(b)	41:428a(b), (c).	
1903(c)	41:428a(d).	

Editorial Notes

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(3), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424. Chapter 9 of part I of the Act is classified generally to part IX [§2292 et seq.] of subchapter I of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

2021—Subsec. (b)(3). Pub. L. 117-81, §1702(h)(7)(A), substituted “section 3205(a)(2)” for “section 2304(g)(1)(B)”.

Subsec. (c)(2)(B). Pub. L. 117-81, §1701(h)(7)(B), substituted “chapter 271” for “section 2306a”.

2018—Subsec. (c). Pub. L. 115-232, §836(b)(5)(A), substituted “Commercial Product or Commercial Service” for “Commercial Item” in heading.

Subsec. (c)(1). Pub. L. 115-232, §836(b)(5)(B), substituted “as a commercial product or a commercial service” for “as a commercial item”.

Subsec. (c)(2). Pub. L. 115-232, §836(b)(5)(C), substituted “for a product or service treated as a commercial product or a commercial service” for “for an item or service treated as a commercial item” in introductory provisions.

2016—Subsec. (a)(2). Pub. L. 114-328, §1641, inserted “cyber,” before “nuclear.”

Subsec. (a)(3), (4). Pub. L. 114-328, §816, added pars. (3) and (4).

2015—Subsec. (b)(2)(A). Pub. L. 114-92, §816(1), substituted “\$750,000” for “\$250,000”.

Subsec. (b)(2)(B). Pub. L. 114-92, §816(2), substituted “\$1,500,000” for “\$1,000,000”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

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

§ 1904. Certain transactions for defense against attack

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency that engages in basic research, applied research, advanced research, and development projects that are necessary to the responsibilities of the executive agency in the field of research and development and have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack may exercise the same authority (subject to the same restrictions and conditions) with respect to the research and projects as the Secretary of Defense may exercise under section 2371¹ of title

10, except for subsections (b) and (f) of section 2371.

(2) PROTOTYPE PROJECTS.—The head of an executive agency, under the authority of paragraph (1), may carry out prototype projects that meet the requirements of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845¹ of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under section 845(a) of that Act and that the period of authority to carry out projects under section 845(a) of that Act terminates as provided in section 845(i) of that Act.

(3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying the requirements and conditions of section 845 of that Act under this subsection—

(A) section 845(c) of that Act shall apply with respect to prototype projects carried out under paragraph (2); and

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under section 845(d) of that Act.

(4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

(A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) DEPARTMENT OF HOMELAND SECURITY.—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) ANNUAL REPORT.—The annual report of the head of an executive agency that is required under section 2371(h)¹ of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) TERMINATION OF AUTHORITY.—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3721.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1904	41:428a note.	Pub. L. 108-136, title XIV, §1441, Nov. 24, 2003, 117 Stat. 1673.

In subsection (a)(2), the reference to subsection (g) of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note) is changed to subsection (i) because of section

¹ See References in Text note below.

847(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1554), which redesignated subsection (g) as subsection (h), and section 823(2) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163, 119 Stat. 3387), which redesignated subsection (h) as subsection (i).

In subsection (a)(3)(A), the words “paragraph (2)” are substituted for “this paragraph” to correct the cross-reference.

In subsection (a)(4)(A), the words “to use the authority for such project” are omitted as unnecessary.

In subsection (c), 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). The words “Committee on Oversight and Government Reform” are substituted for “Committee 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).

Editorial Notes

REFERENCES IN TEXT

Section 2371 of title 10, referred to in subsec. (a)(1), was renumbered section 4021 of title 10 by Pub. L. 116-283, § 1841(b)(1), as amended by Pub. L. 117-81, div. A, title XVII, § 1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note), referred to in subsec. (a)(2), was repealed by Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

Section 2371(h) of title 10, referred to in subsec. (c), was repealed by Pub. L. 113-291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.

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.

§ 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the

Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3722.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1905(a)	no source.	
1905(b)-(d) ..	41:429.	Pub. L. 93-400, § 33, as added Pub. L. 103-355, title IV, § 4101, Oct. 13, 1994, 108 Stat. 3339.

§ 1906. List of laws inapplicable to procurements of commercial products and commercial services

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial products or commercial services. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial products or commercial services by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial products or commercial services.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Fed-

eral Government to exempt contracts for the procurement of commercial products or commercial services from the applicability of the provision.

(c) SUBCONTRACTS.—

(1) DEFINITION.—In this subsection, the term “subcontract” includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Federal Government and other parties and are not identifiable to any particular contract.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under a contract or subcontract for the procurement of commercial products or commercial services. A provision of law properly included on the list pursuant to paragraph (3) does not apply to those subcontracts. This section does not render a provision of law not included on the list inapplicable to subcontracts under a contract for the procurement of commercial products or commercial services.

(3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law described in subsection (d) shall be included on the list of inapplicable provisions of law required by paragraph (2) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt subcontracts under a contract for the procurement of commercial products or commercial services from the applicability of the provision.

(4) WAIVER NOT AUTHORIZED.—This subsection does not authorize the waiver of the applicability of any provision of law with respect to any subcontract under a contract with a prime contractor reselling or distributing commercial products or commercial services of another contractor without adding value.

(d) COVERED LAW.—A provision of law referred to in subsections (b)(2) and (c) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial products or commercial services.

(e) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (d) is not included on the list of inapplicable provisions of law as required by subsection (b) or (c) and the Council has not made a written determination pursuant to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal Acquisition Regulation to include the provision on

the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3723; Pub. L. 115-91, div. A, title VIII, §820, Dec. 12, 2017, 131 Stat. 1464; Pub. L. 115-232, div. A, title VIII, §836(b)(6)(A), (B)(i), Aug. 13, 2018, 132 Stat. 1861.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1906(a)	no source.	
1906(b)–(e) ..	41:430.	Pub. L. 93-400, §34, as added Pub. L. 103-355, title VIII, §8003(a), Oct. 13, 1994, 108 Stat. 3388.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, §836(b)(6)(B)(i), substituted “List of laws inapplicable to procurements of commercial products and commercial services” for “List of laws inapplicable to procurements of commercial items” in section catchline.

Subsecs. (b) to (d). Pub. L. 115-232, §836(b)(6)(A), substituted “commercial products or commercial services” for “commercial items” wherever appearing.

2017—Subsec. (c)(1). Pub. L. 115-91 inserted at end “The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Federal Government and other parties and are not identifiable to any particular contract.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

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

§ 1907. List of laws inapplicable to procurements of commercially available off-the-shelf items

(a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) LAWS TO BE INCLUDED.—A provision of law described in subsection (b) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision.

(3) OTHER AUTHORITIES OR RESPONSIBILITIES NOT AFFECTED.—This section does not modify,

supersede, impair, or restrict authorities or responsibilities under—

(A) section 15 of the Small Business Act (15 U.S.C. 644); or

(B) bid protest procedures developed under the authority of—

(i) subchapter V of chapter 35 of title 31;

(ii) section 3308 of title 10; or

(iii) sections 3706 and 3707 of this title.

(b) COVERED LAW.—Except as provided in subsection (a)(3), a provision of law referred to in subsection (a)(1) is a provision of law that the Administrator determines imposes Federal Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services on persons whom the Federal Government has awarded contracts for the procurement of commercially available off-the-shelf items, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercially available off-the-shelf items.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3724; Pub. L. 117–81, div. A, title XVII, §1702(h)(8), Dec. 27, 2021, 135 Stat. 2158.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1907	41:431(a), (b).	Pub. L. 93–400, §35(a), (b), as added Pub. L. 104–106, title XLII, §4203(a), Feb. 10, 1996, 110 Stat. 654; Pub. L. 105–85, title X, §1073(g)(2)(C), Nov. 18, 1997, 111 Stat. 1906.

AMENDMENTS

2021—Subsec. (a)(3)(B)(ii). Pub. L. 117–81 substituted “section 3308” for “section 2305(e) and (f)”.

§ 1908. Inflation adjustment of acquisition-related dollar thresholds

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the requirement for adjustment under subsection (c) applies to a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the Council determines.

(2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresholds—

(A) in chapters 67 and 83 of this title;

(B) in sections 3141 to 3144, 3146, and 3147 of title 40;

(C) the United States Trade Representative establishes pursuant to title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.); or

(D) in sections 3131 through 3134 of title 40, except any modification of any such dollar threshold made by regulation in effect on

the date of the enactment of this subparagraph shall remain in effect.

(3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—This section supercedes the applicability of other provisions of law that provide for the adjustment of a dollar threshold that is adjustable under this section.

(c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

(1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of paragraph (2), the baseline constant dollar value for a dollar threshold—

(A) in effect on October 1, 2000, that was first specified in a law that took effect on or before October 1, 2000, is the October 1, 2000, constant dollar value of that dollar threshold; and

(B) specified in a law that takes effect after October 1, 2000, is the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to that law.

(2) ADJUSTMENT.—On October 1 of each year evenly divisible by 5, the Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (b)(1), to the baseline constant dollar value of that threshold.

(3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjustable under this section shall be adjusted only as provided in this section.

(d) PUBLICATION.—The Council shall publish a notice of the adjusted dollar thresholds under this section in the Federal Register. The thresholds take effect on the date of publication and shall apply, in the case of the procurement of property or services by contract, to a contract, and any subcontract at any tier under the contract, in effect on that date without regard to the date of award of the contract or subcontract.

(e) CALCULATION.—An adjustment under this section shall be—

(1) calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Secretary of Labor; and

(2) rounded, in the case of a dollar threshold that as calculated under paragraph (1) is—

(A) less than \$10,000, to the nearest \$500;

(B) not less than \$10,000, but less than \$100,000, to the nearest \$5,000;

(C) not less than \$100,000, but less than \$1,000,000, to the nearest \$50,000;

(D) not less than \$1,000,000, but less than \$10,000,000, to the nearest \$500,000;

(E) not less than \$10,000,000, but less than \$100,000,000, to the nearest \$5,000,000;

(F) not less than \$100,000,000, but less than \$1,000,000,000, to the nearest \$50,000,000; and

(G) \$1,000,000,000 or more, to the nearest \$500,000,000.

(f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—

(1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may request adjustment of a dollar threshold adjustable under this section that is not included in a notice of adjustment published under subsection (d) by submitting a petition for adjustment to the Administrator.

(2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for adjustment of a dollar threshold under paragraph (1), the Administrator—

(A) shall determine, in writing, whether the dollar threshold is required to be adjusted under this section; and

(B) on determining that it should be adjusted, shall publish in the Federal Register a revised notice of the adjustment dollar thresholds under this section that includes the adjustment of the dollar threshold covered by the petition.

(3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjustment of a dollar threshold pursuant to a petition under this subsection takes effect on the date the revised notice adding the adjustment under paragraph (2)(B) is published.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3725; Pub. L. 114–92, div. A, title VIII, §817, Nov. 25, 2015, 129 Stat. 897; Pub. L. 115–91, div. A, title VIII, §821, Dec. 12, 2017, 131 Stat. 1464; Pub. L. 117–58, div. G, title IX, §70922(f), Nov. 15, 2021, 135 Stat. 1305; Pub. L. 117–81, div. A, title VIII, §861, Dec. 27, 2021, 135 Stat. 1851.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1908(a) 1908(b)(1)	no source. 41:431a(c).	Pub. L. 93–400, §35A, as added Pub. L. 108–375, title VIII, §807(a)(1), Oct. 28, 2004, 118 Stat. 2010.
1908(b)(2) 1908(b)(3)	41:431a(d). 41:431a note.	Pub. L. 108–375, title VIII, §807(c)(1), Oct. 28, 2004, 118 Stat. 2011.
1908(c)(1), (2). 1908(c)(3)	41:431a(a). 41:431a note.	Pub. L. 108–375, title VIII, §807(c)(2), Oct. 28, 2004, 118 Stat. 2011.
1908(d) 1908(e) 1908(f)	41:431a(b). 41:431a(e). 41:431a(f).	

In subsection (c)(3), the words “After the date of the enactment of this Act” are omitted as obsolete.

In subsection (e)(1), the words “Secretary of Labor” are substituted for “Department of Labor” because of 29:551.

Editorial Notes

REFERENCES IN TEXT

The Trade Agreements Act of 1979, referred to in subsec. (b)(2)(C), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144. Title III of the Act is classified generally to subchapter I (§2511 et seq.) of chapter 13 of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (b)(2)(D), is the date of enactment of Pub. L. 117–81, which was approved Dec. 27, 2021.

AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 117–58 substituted “chapters 67 and 83” for “chapter 67”.

Subsec. (b)(2)(D). Pub. L. 117–81, §861(a), added subpar. (D).

Subsec. (d). Pub. L. 117–81, §861(b), struck out second period at end.

2017—Subsec. (d). Pub. L. 115–91 inserted before period at end “and shall apply, in the case of the procurement of property or services by contract, to a contract, and any subcontract at any tier under the contract, in ef-

fect on that date without regard to the date of award of the contract or subcontract.”

2015—Subsec. (e)(2). Pub. L. 114–92, §817(1), substituted “as calculated under paragraph (1)” for “on the day before the adjustment” in introductory provisions.

Subsec. (e)(2)(D) to (G). Pub. L. 114–92, §817(2), (3), added subpars. (D) to (G) and struck out former subpar. (D) which read as follows: “\$1,000,000 or more, to the nearest \$500,000.”

Statutory Notes and Related Subsidiaries

ADJUSTMENT FOR INFLATION OF RIGHT-HAND DRIVE PASSENGER SEDANS

Pub. L. 112–81, div. A, title VIII, §814(b), Dec. 31, 2011, 125 Stat. 1491, provided that: “The Department of Defense representative to the Federal Acquisition Regulatory Council established under section 1302 of title 41, United States Code, shall ensure that the threshold established in section 2253 of title 10, United States Code, for the acquisition of right-hand drive passenger sedans is included on the list of dollar thresholds that are subject to adjustment for inflation in accordance with the requirements of section 1908 of title 41, United States Code, and is adjusted pursuant to such provision, as appropriate.”

§ 1909. Management of purchase cards

(a) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—The head of each executive agency that issues and uses purchase cards and convenience checks shall establish and maintain safeguards and internal controls to ensure the following:

(1) There is a record in each executive agency of each holder of a purchase card issued by the agency for official use, annotated with the limitations on single transactions and total transactions that are applicable to the use of each such card or check by that purchase card holder.

(2) Each purchase card holder and individual issued a convenience check is assigned an approving official other than the card holder with the authority to approve or disapprove transactions.

(3) The holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding a summary report to the certifying official in a timely manner of information necessary to enable the certifying official to ensure that the Federal Government ultimately pays only for valid charges that are consistent with the terms of the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(4) Any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(5) Payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(6) Rebates and refunds based on prompt payment, sales volume, or other actions by the

agency on purchase card accounts are reviewed for accuracy and properly recorded as a receipt to the agency that pays the monthly bill.

(7) Records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(8) Periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(9) Appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the executive agency.

(10) The executive agency has specific policies regarding the number of purchase cards issued by various component organizations and categories of component organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(11) The executive agency uses effective systems, techniques, and technologies to prevent or identify illegal, improper, or erroneous purchases.

(12) The executive agency invalidates the purchase card of each employee who—

(A) ceases to be employed by the agency, immediately upon termination of the employment of the employee; or

(B) transfers to another unit of the agency, immediately upon the transfer of the employee unless the agency determines that the units are covered by the same purchase card authority.

(13) The executive agency takes steps to recover the cost of any illegal, improper, or erroneous purchase made with a purchase card or convenience check by an employee, including, as necessary, through salary offsets.

(b) **GUIDANCE.**—The Director of the Office of Management and Budget shall review existing guidance and, as necessary, prescribe additional guidance governing the implementation of the requirements of subsection (a) by executive agencies.

(c) **PENALTIES FOR VIOLATIONS.**—

(1) **IN GENERAL.**—The head of each executive agency shall provide for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the agency violate agency policies implementing the guidance required by subsection (b) or make illegal, improper, or erroneous purchases with purchase cards or convenience checks.

(2) **DISMISSAL.**—Penalties prescribed for employee misuse of purchase cards or convenience checks shall include dismissal of the employee, as appropriate.

(3) **REPORTS ON VIOLATIONS.**—The guidance prescribed under subsection (b) shall direct each head of an executive agency with more

than \$10,000,000 in purchase card spending annually, and each Inspector General of such an executive agency, on a semiannual basis, to submit to the Director of the Office of Management and Budget a joint report on violations or other actions covered by paragraph (1) by employees of such executive agency. At a minimum, the report shall set forth the following:

(A) A summary description of confirmed violations involving misuse of a purchase card following completion of a review by the agency or by the Inspector General of the agency.

(B) A summary description of all adverse personnel action, punishment, or other action taken based on each violation.

(d) **RISK ASSESSMENTS AND AUDITS.**—The Inspector General of each executive agency shall—

(1) conduct periodic assessments of the agency purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments in order to develop a plan for using such risk assessments to determine the scope, frequency, and number of periodic audits of purchase card or convenience check transactions;

(2) perform analysis or audits, as necessary, of purchase card transactions designed to identify—

(A) potentially illegal, improper, or erroneous uses of purchase cards;

(B) any patterns of such uses; and

(C) categories of purchases that could be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices (excluding transactions made under card-based strategic sourcing arrangements);

(3) report to the head of the executive agency concerned on the results of such analysis or audits; and

(4) report to the Director of the Office of Management and Budget on the implementation of recommendations made to the head of the executive agency to address findings of any analysis or audit of purchase card and convenience check transactions or programs for compilation and transmission by the Director to Congress and the Comptroller General.

(e) **RELATIONSHIP TO DEPARTMENT OF DEFENSE PURCHASE CARD REGULATIONS.**—The requirements of this section shall not apply to the Department of Defense. See section 4754 of title 10 for provisions relating to management of purchase cards in the Department.

(Added Pub. L. 112–194, §2(a)(1), Oct. 5, 2012, 126 Stat. 1445; Pub. L. 117–81, div. A, title XVII, §1702(h)(9), Dec. 27, 2021, 135 Stat. 2158.)

Editorial Notes

AMENDMENTS

2021—Subsec. (e). Pub. L. 117–81 substituted “section 4754” for “section 2784”.

Statutory Notes and Related Subsidiaries**DEADLINE FOR GUIDANCE ON MANAGEMENT OF
PURCHASE CARDS**

Pub. L. 112-194, §2(c), Oct. 5, 2012, 126 Stat. 1448, required the Director of the Office of Management and Budget to prescribe the guidance required by subsec. (b) of this section not later than 180 days after Oct. 5, 2012.

**CHAPTER 21—RESTRICTIONS ON OBTAINING
AND DISCLOSING CERTAIN INFORMATION**

Sec.	
2101.	Definitions.
2102.	Prohibitions on disclosing and obtaining procurement information.
2103.	Actions required of procurement officers when contacted regarding non-Federal employment.
2104.	Prohibition on former official's acceptance of compensation from contractor.
2105.	Penalties and administrative actions.
2106.	Reporting information believed to constitute evidence of offense.
2107.	Savings provisions.

§ 2101. Definitions

In this chapter:

(1) **CONTRACTING OFFICER.**—The term “contracting officer” means an individual who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to the contract.

(2) **CONTRACTOR BID OR PROPOSAL INFORMATION.**—The term “contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of, or in connection with, a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in section 3701 of title 10 with respect to procurements subject to that section and section 3501(a) of this title with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor as “contractor bid or proposal information”, in accordance with applicable law or regulation.

(3) **FEDERAL AGENCY.**—The term “Federal agency” has the meaning given that term in section 102 of title 40.

(4) **FEDERAL AGENCY PROCUREMENT.**—The term “Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

(5) **OFFICIAL.**—The term “official” means—

(A) an officer, as defined in section 2104 of title 5;

(B) an employee, as defined in section 2105 of title 5; and

(C) a member of the uniformed services, as defined in section 2101(3) of title 5.

(6) **PROTEST.**—The term “protest” means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31.

(7) **SOURCE SELECTION INFORMATION.**—The term “source selection information” means any of the following information prepared for use by a Federal agency to evaluate a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

(I) Reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as “source selection information” based on a case-by-case determination by the head of the agency, the head's designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3727; Pub. L. 117-81, div. A, title XVII, §1702(h)(10), 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>
2101(1)	41:423(f)(5).	Pub. L. 93-400, §27(f), 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. 662.
2101(2)	41:423(f)(1).	
2101(3)	41:423(f)(3).	
2101(4)	41:423(f)(4).	
2101(5)	41:423(f)(7).	
2101(6)	41:423(f)(6).	
2101(7)	41:423(f)(2).	

Editorial Notes**AMENDMENTS**

2021—Par. (2)(A). Pub. L. 117-81 substituted “section 3701” for “section 2306a(h)”.

§ 2102. Prohibitions on disclosing and obtaining procurement information

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) IN GENERAL.—Except as provided by law, a person described in paragraph (3) shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction in paragraph (1), an employee of a private sector organization assigned to an agency under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal information or source selection information during the 3-year period after the employee's assignment ends, except as provided by law.

(3) APPLICATION.—Paragraph (1) applies to a person that—

(A)(i) is a present or former official of the Federal Government; or

(ii) is acting or has acted for or on behalf of, or who is advising or has advised the Federal Government with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3728.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2102(a)	41:423(a).	Pub. L. 93-400, § 27(a), (b), 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. 659; Pub. L. 107-347, title II, § 209(d)(4), Dec. 17, 2002, 116 Stat. 2930.
2102(b)	41:423(b).	

§ 2103. Actions required of procurement officers when contacted regarding non-Federal employment

(a) ACTIONS REQUIRED.—An agency official participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold who contacts or is contacted by a person that is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official shall—

(1) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(A) reject the possibility of non-Federal employment; or

(B) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until the agency authorizes the official to resume participation in the procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(i) the person is no longer a bidder or offeror in that Federal agency procurement; or

(ii) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(b) RETENTION OF REPORTS.—The agency shall retain each report required by this section for not less than 2 years following the submission of the report. The reports shall be made available to the public on request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of that section may be withheld from disclosure to the public.

(c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) An official who knowingly fails to comply with the requirements of this section.

(2) A bidder or offeror that engages in employment discussions with an official who is subject to the restrictions of this section, knowing that the official has not complied with paragraph (1) or (2) of subsection (a).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3728.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2103(a)	41:423(c)(1).	Pub. L. 93-400, § 27(c), 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. 660.
2103(b)	41:423(c)(2).	
2103(c)	41:423(c)(3), (4).	

§ 2104. Prohibition on former official's acceptance of compensation from contractor

(a) PROHIBITION.—A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after the official—

(1) served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of the source selection evalua-

tion board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(3) personally made for the Federal agency a decision to—

(A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of \$10,000,000;

(C) approve issuance of one or more contract payments in excess of \$10,000,000 to that contractor; or

(D) pay or settle a claim in excess of \$10,000,000 with that contractor.

(b) **WHEN COMPENSATION MAY BE ACCEPTED.**—Subsection (a) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (1), (2), or (3) of subsection (a).

(c) **IMPLEMENTING REGULATIONS.**—Regulations implementing this section shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this section from accepting compensation from a particular contractor.

(d) **PERSONS SUBJECT TO PENALTIES.**—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) A former official who knowingly accepts compensation in violation of this section.

(2) A contractor that provides compensation to a former official knowing that the official accepts the compensation in violation of this section.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3729.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2104(a)	41:423(d)(1).	Pub. L. 93–400, §27(d), 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(d)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102–25, title VII, §705(d), 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. 660.
2104(b)	41:423(d)(2).	
2104(c)	41:423(d)(5).	
2104(d)	41:423(d)(3), (4).	

§ 2105. Penalties and administrative actions

(a) **CRIMINAL PENALTIES.**—A person that violates section 2102 of this title to exchange infor-

mation covered by section 2102 of this title for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement contract shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) **CIVIL PENALTIES.**—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—

(1) an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and

(2) an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.

(c) **ADMINISTRATIVE ACTIONS.**—

(1) **TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.**—A Federal agency that receives information that a contractor or a person has violated section 2102, 2103, or 2104 of this title shall consider taking one or more of the following actions, as appropriate:

(A) Canceling the Federal agency procurement, if a contract has not yet been awarded.

(B) Rescinding a contract with respect to which—

(i) the contractor or someone acting for the contractor has been convicted for an offense punishable under subsection (a); or

(ii) the head of the agency that awarded the contract has determined, based on a preponderance of the evidence, that the contractor or a person acting for the contractor has engaged in conduct constituting the offense.

(C) Initiating a suspension or debarment proceeding for the protection of the Federal Government in accordance with procedures in the Federal Acquisition Regulation.

(D) Initiating an adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(2) **AMOUNT GOVERNMENT ENTITLED TO RECOVER.**—When a Federal agency rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(3) **PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.**—For purposes of a suspension or debarment proceeding initiated pursuant to paragraph (1)(C), engaging in conduct constituting an offense under section 2102, 2103, or 2104 of this title affects the present responsibility of a Federal Government contractor or subcontractor.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3730.)

HISTORICAL AND REVISION NOTES

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

HISTORICAL AND REVISION NOTES

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

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

Sec.	
2301.	Use of electronic commerce in Federal procurement.
2302.	Rights in technical data.
2303.	Ethics safeguards related to contractor conflicts of interest.
2304.	Conflict of interest standards for consultants.
2305.	Authority of Director of Office of Management and Budget not affected.
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2312.	Contingency Contracting Corps.
2313.	Database for Federal agency contract and grant officers and suspension and debarment officials.

§ 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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