

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 A, title VIII, § 834(d), Jan. 7, 2011, 124 Stat. 4279, prior to being repealed and reenacted as this section by Pub.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

with a State or a local government as described in subsection (c).

“(3) AMENDMENT OF FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date of the enactment of this Act [Oct. 5, 2018], the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to implement the requirement of this subsection, including a determination of the factors for executive agencies to consider for purposes of performing the analysis under paragraph (1).

“(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect the requirements of chapter 37 of title 41, United States Code, sections 3206 through 3208 and sections 3301 through 3309 of title 10, United States Code, or section 1535 of title 31, United States Code.

“(b) DATE OF IMPLEMENTATION.—The analysis described in subsection (a) shall be applied to contracts for the acquisition of equipment entered into on or after the date that the Federal Acquisition Regulation is amended pursuant to paragraph (3) of such subsection.

“(c) ACQUISITION AGREEMENTS WITH STATES OR LOCAL GOVERNMENTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, including chapter 37 of title 41, United States Code, the Small Business Act (15 U.S.C. 631 et seq.), and sections 3206 through 3208 and sections 3301 through 3309 of title 10, United States Code, the head of an executive agency may enter into an acquisition agreement authorized by this section directly with a State or a local government if the agency head determines that the agreement otherwise satisfies the requirements of subsection (a)(1).

“(2) TERMS AND CONDITIONS.—Any agreement under paragraph (1) shall contain such terms and conditions as the head of the agency deems necessary or appropriate to protect the interests of the United States.

“(d) EXCEPTIONS.—The analysis otherwise required under subsection (a) is not required—

“(1) when the President has issued an emergency declaration or a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

“(2) in other emergency situations if the agency head makes a determination that obtaining such equipment is necessary in order to protect human life or property; or

“(3) when otherwise authorized by law.

“(e) STUDY OF AGENCY ANALYSES.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a comprehensive report on the decisions made by the executive agencies with the highest levels of acquisition spending, and a sample of executive agencies with lower levels of acquisition spending, to acquire high-value equipment by lease, rental, or purchase pursuant to subpart 7.4 of the Federal Acquisition Regulation.

“(f) DEFINITIONS.—In this section:

“(1) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 102 of title 40, United States Code.

“(2) INTERAGENCY ACQUISITION.—The term ‘inter-agency acquisition’ has the meaning given that term in section 2.101 of the Federal Acquisition Regulation.

“(3) STATE.—The term ‘State’ has the meaning given the term in section 6501 of title 31, United States Code.

“(4) LOCAL GOVERNMENT.—The term ‘local government’ means any unit of local government within a State, including a county, municipality, city, borough, town, township, parish, local public authority, school district, special district, intrastate district, council of governments, or regional or interstate government entity, and any agency or instrumentality of a local government.”

UNIFORM CONTRACT WRITING SYSTEM REQUIREMENTS

Pub. L. 112-239, div. A, title VIII, §862, Jan. 2, 2013, 126 Stat. 1859, provided that:

“(a) UNIFORM STANDARDS AND CONTROLS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the officials specified in subsection (b) shall—

“(1) establish uniform data standards, internal control requirements, independent verification and validation requirements, and business process rules for processing procurement requests, contracts, receipts, and invoices by the Department of Defense or other executive agencies, as applicable;

“(2) establish and maintain one or more approved electronic contract writing systems that conform with the standards, requirements, and rules established pursuant to paragraph (1); and

“(3) require the use of electronic contract writing systems approved in accordance with paragraph (2) for all contracts entered into by the Department of Defense or other executive agencies, as applicable.

“(b) COVERED OFFICIALS.—The officials specified in this subsection are the following:

“(1) The Secretary of Defense, with respect to the Department of Defense and the military departments.

“(2) The Administrator for Federal Procurement Policy, with respect to the executive agencies other than the Department of Defense and the military departments.

“(c) ELECTRONIC WRITING SYSTEMS FOR DEPARTMENT OF STATE AND USAID.—Notwithstanding subsection (b)(2), the Secretary of State and the Administrator of the United States Agency for International Development may meet the requirements of subsection (a)(2) with respect to approved electronic contract writing systems for the Department of State and the United States Agency for International Development, respectively, if the Secretary and the Administrator, as the case may be, demonstrate to the Administrator for Federal Procurement Policy that prior investment of resources in existing contract writing systems will result in the most cost effective and efficient means to satisfy such requirements.

“(d) PHASE-IN OF IMPLEMENTATION OF REQUIREMENT FOR APPROVED SYSTEMS.—The officials specified in subsection (b) may phase in the implementation of the requirement to use approved electronic contract writing systems in accordance with subsection (a)(3) over a period of up to five years beginning with the date of the enactment of this Act [Jan. 2, 2013].

“(e) REPORTS.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the officials specified in subsection (b) shall each submit to the appropriate committees of Congress a report on the implementation of the requirements of this section. Each report shall, at a minimum—

“(1) describe the standards, requirements, and rules established pursuant to subsection (a)(1);

“(2) identify the electronic contract writing systems approved pursuant to subsection (a)(2) and, if multiple systems are approved, explain why the use of such multiple systems is the most efficient and effective approach to meet the contract writing needs of the Federal Government; and

“(3) provide the schedule for phasing in the use of approved electronic contract writing systems in accordance with subsections (a)(3) and (d).

“(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.”

§ 3101. Applicability

(a) IN GENERAL.—An executive agency shall make purchases and contracts for property and services in accordance with this division and implementing regulations of the Administrator of General Services.

(b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

(1) SIMPLIFIED ACQUISITION THRESHOLD.—

(A) DEFINITION.—For purposes of an acquisition by an executive agency, the simplified acquisition threshold is as specified in section 134 of this title.

(B) INAPPLICABLE LAWS.—A law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of this title does not apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of this title apply in executive agencies as provided in section 1901.

(c) EXCEPTIONS.—

(1) IN GENERAL.—This division does not apply—

(A) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(B) except as provided in paragraph (2), when this division is made inapplicable pursuant to law.

(2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING, OPENING OF BIDS, AND LENGTH OF CONTRACT.—Sections 6101, 6103, and 6304 of this title do not apply to the procurement of property or services made by an executive agency pursuant to this division. However, when this division is made inapplicable by any law, sections 6101 and 6103 of this title apply in the absence of authority conferred by statute to procure without advertising or without regard to section 6101 of this title. A law that authorizes an executive agency (other than an executive agency exempted from this division by this subsection) to procure property or services without advertising or without regard to section 6101 of this title is deemed to authorize the procurement pursuant to the provisions of this division relating to procedures other than sealed-bid procedures.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3742.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3101(a)	41:252(a) (words before 1st semi-colon).	June 30, 1949, ch. 288, title III, §302(a), 63 Stat. 393; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §1, Aug. 28, 1958, 72 Stat. 966; Pub. L. 89-343, §1, Nov. 8, 1965, 79 Stat. 1303.
3101(b)(1)	41:252a.	June 30, 1949, ch. 288, title III, §302A, as added Pub. L. 103-355, title IV, §§4003, 4103(a), Oct. 13, 1994, 108 Stat. 3338, 3341.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3101(b)(2)	41:252b.	June 30, 1949, ch. 288, title III, §302B, as added Pub. L. 103-355, title IV, §4203(b), Oct. 13, 1994, 108 Stat. 3346.
3101(c)(1)	41:252(a) (words after 1st semi-colon and before “but when”).	
3101(c)(2)	41:252(a) (words after “other law”). 41:260.	June 30, 1949, ch. 288, title III, §310, 63 Stat. 397; July 12, 1952, ch. 703, §1(m), (n), 66 Stat. 594; Pub. L. 85-800, §6, Aug. 28, 1958, 72 Stat. 967; Pub. L. 89-343, §5, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 98-369, div. B, title VII, §2714(a)(6), July 18, 1984, 98 Stat. 1185.

In subsection (c)(1)(B), the words “except as provided in paragraph (2)” are added for clarity. The words “section 113(e) of title 40 or any other” are omitted as unnecessary.

Executive Documents

EX. ORD. NO. 13005. EMPOWERMENT CONTRACTING

Ex. Ord. No. 13005, May 21, 1996, 61 F.R. 26069, provided:

In order to promote economy and efficiency in Federal procurement, it is necessary to secure broad-based competition for Federal contracts. This broad competition is best achieved where there is an expansive pool of potential contractors capable of producing quality goods and services at competitive prices. A great and largely untapped opportunity for expanding the pool of such contractors can be found in this Nation’s economically distressed communities.

Fostering growth of Federal contractors in economically distressed communities and ensuring that those contractors become viable businesses for the long term will promote economy and efficiency in Federal procurement and help to empower those communities. Fostering growth of long-term viable contractors will be promoted by offering appropriate incentives to qualified businesses.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States, including section 486(a) [now 121(a)] of title 40, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.* The purpose of this order is to strengthen the economy and to improve the efficiency of the Federal procurement system by encouraging business development that expands the industrial base and increases competition.

SEC. 2. *Empowerment Contracting Program.* In consultation with the Secretaries of the Departments of Housing and Urban Development, Labor, and Defense; the Administrator of General Services; the Administrator of the National Aeronautics and Space Administration; the Administrator of the Small Business Administration; and the Administrator for Federal Procurement Policy, the Secretary of the Department of Commerce shall develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or an evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this order. In developing such policies and procedures, the Secretary shall consider the size of the qualified businesses.

SEC. 3. *Monitoring and Evaluation.* The Secretary shall: