

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.

J.R. BIDEN, JR.

### § 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) **AUTHORIZED TYPES.**—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) **REQUIRED WARRANTY.**—

(1) **CONTENT.**—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) **REMEDY FOR BREACH OR VIOLATION.**—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) **NONAPPLICATION.**—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial products or commercial services.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774; Pub. L. 115–232, div. A, title VIII, § 836(b)(16), Aug. 13, 2018, 132 Stat. 1864.)

#### HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)                                                                                                                                                                                                                          |
|-----------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3901 .....      | 41:254(a).         | June 30, 1949, ch. 288, title III, § 304(a), 63 Stat. 395; Pub. L. 98–369, div. B, title VII, § 2714(a)(3)(A), (B), July 18, 1984, 98 Stat. 1184; Pub. L. 103–355, title IV, § 4103(c), title VIII, § 8204(b), Oct. 13, 1994, 108 Stat. 3341, 3396. |

In subsection (b)(2), the words “in its discretion” are omitted as unnecessary.

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (b)(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.

### § 3902. Severable services contracts for periods crossing fiscal years

(a) **AUTHORITY TO ENTER INTO CONTRACT.**—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) **OBLIGATION OF FUNDS.**—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)

#### HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)                                                                                                                                                                                |
|-----------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3902 .....      | 41:253l.           | June 30, 1949, ch. 288, title III, § 303L, as added Pub. L. 103–355, title I, § 1073, Oct. 13, 1994, 108 Stat. 3271, as amended Pub. L. 104–106, title XLIII, § 4321(a)(1), Feb. 10, 1996, 110 Stat. 671. |

#### Statutory Notes and Related Subsidiaries

##### SEVERABLE SERVICES AND MULTIYEAR CONTRACT AUTHORITY OF JUDICIAL ENTITIES

Pub. L. 113–76, div. E, title III, § 306, Jan. 17, 2014, 128 Stat. 203, provided that: “The Supreme Court of the United States, the Federal Judicial Center, and the United States Sentencing Commission are hereby authorized, now and hereafter, to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into contracts for multiple years for the acquisition of property and services, to the same extent as executive agencies under the authority of 41 U.S.C. sections 3902 and 3903, respectively.”

### § 3903. Multiyear contracts

(a) **DEFINITION.**—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) **AUTHORITY TO ENTER INTO CONTRACT.**—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency’s programs.